

## 3 Am. Jur. 2d Agreed Case Summary

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

### Correlation Table

## Summary

### Scope:

This article discusses the subject of "agreed case," with discussion of the general nature, definitions of, and distinctions from the concept; various procedural matters pertaining to the submission of such a case; the general effect of an agreed case; the form of submission of an agreed case; pleadings for submission of an agreed case; the action of the court upon the submission of an agreed case; and appellate review of an agreed case.

### Treated Elsewhere:

Actions for declaratory relief, see [Am. Jur. 2d, Declaratory Judgments §§ 1 et seq.](#)

Appeal, agreed statement in federal court in lieu of record on, see [Am. Jur. 2d, Appellate Review § 457](#)

"Clearly erroneous" standard as applicable to finding based on undisputed or stipulated facts, see [Am. Jur. 2d, Appellate Review § 640](#)

Compromise and settlement agreements, see [Am. Jur. 2d, Compromise and Settlement §§ 1 et seq.](#)

Consent judgments, see [Am. Jur. 2d, Judgments §§ 183 to 203](#)

Federal tax enforcement proceedings: stipulations in discovery pertaining to, see [Am. Jur. 2d, Federal Tax Enforcement §§ 804 to 813](#); submission of case without trial based on admissions or stipulated facts, see [Am. Jur. 2d, Federal Tax Enforcement § 832](#)

Pretrial conferences, admissions of fact and stipulations in, see [Am. Jur. 2d, Pretrial Conference and Procedure §§ 26 to 28](#)

Reporter's transcript for use in criminal appeal, motion for new trial after entry of judgment on agreed statement, based on unavailability of, see [Am. Jur. 2d, New Trial § 78](#)

Requests for admission during discovery or other pretrial stage of action, see [Am. Jur. 2d, Depositions and Discovery §§ 1 et seq.](#)

Special issues, submission to jury of, see [Am. Jur. 2d, Trial § 1664](#)

Stipulations, generally, see [Am. Jur. 2d, Stipulations §§ 1 et seq.](#)

Stipulations of facts for purpose of appeal in absence of transcript of trial court proceedings, see [Am. Jur. 2d, Appellate Review § 456](#)

Submission of case upon agreed statement of facts, see [Am. Jur. 2d, Trial § 1663](#)

Validity of constitutional provision, determination of, by admission or stipulation, see [Am. Jur. 2d, Constitutional Law § 135](#)

**Research References:**

**Westlaw Databases**

- [All Federal Cases \(ALLFEDS\)](#)
- [All State Cases \(ALLSTATES\)](#)
- [American Law Reports \(ALR\)](#)
- [West's A.L.R. Digest \(ALRDIGEST\)](#)
- [American Jurisprudence 2d \(AMJUR\)](#)
- [American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)

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## 3 Am. Jur. 2d Agreed Case I A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

##### A. General Nature, Definitions, and Distinctions

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#) 14(10), 18(7)

West's Key Number Digest, [Trial](#) 35

### A.L.R. Library

A.L.R. Index, Agreed Case

A.L.R. Index, Stipulations

West's A.L.R. Digest, [Stipulations](#) 14(10), 18(7)

West's A.L.R. Digest, [Trial](#) 35

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## 3 Am. Jur. 2d Agreed Case § 1

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

##### A. General Nature, Definitions, and Distinctions

### § 1. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10)

#### Forms

Forms relating to agreed statements of fact without action, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [[Westlaw® Search Query](#)]

An "agreed case" is a special proceeding<sup>1</sup> characterized by the parties' submission to the court of an agreed statement of the facts essential to determine the particular litigation that enables the court to determine only matters of law.<sup>2</sup> The phrase "agreed case" is used interchangeably with other terms such as "case stated,"<sup>3</sup> "case agreed,"<sup>4</sup> "case submitted upon agreed statement of facts,"<sup>5</sup> "submission of controversy,"<sup>6</sup> "submission of a controversy without action,"<sup>7</sup> "submission of stipulated case,"<sup>8</sup> "statement of facts by the parties,"<sup>9</sup> "agreed facts,"<sup>10</sup> "stipulated facts,"<sup>11</sup> "stipulation of facts,"<sup>12</sup> "controversy without action,"<sup>13</sup> and "agreed statement of facts."<sup>14</sup> An agreed statement of uncontested facts must be introduced into evidence by the party who intends to rely on it in order for those facts to be considered by the trier of fact, whether it be jury or judge.<sup>15</sup>

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#### Footnotes

<sup>1</sup> [Brewster v. Hartley](#), 37 Cal. 15, 1869 WL 861 (1869).

<sup>2</sup> [Kennedy v. B. A. Gardetto, Inc.](#), 306 Mass. 212, 27 N.E.2d 957, 129 A.L.R. 453 (1940).

3                   Campbell v. Boyreau, 62 U.S. 223, 21 How. 223, 16 L. Ed. 96, 1858 WL 9359 (1858); Tyson v. Western  
Nat. Bank, 77 Md. 412, 26 A. 520 (1893); Massachusetts Bay Transp. Authority v. City of Somerville, 451  
Mass. 80, 883 N.E.2d 933 (2008).

4                   McGhee & Co. v. Cox, 116 Va. 718, 82 S.E. 701 (1914).

5                   McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934).

6                   New York Tel. Co. v. Siegel-Cooper Co., 202 N.Y. 502, 96 N.E. 109 (1911).

7                   Northridge Park County Water Dist. v. McDonell, 158 Cal. App. 2d 123, 322 P.2d 25 (3d Dist. 1958).

8                   State Highway Commission v. Sweetman Const. Co., 83 S.D. 27, 153 N.W.2d 682 (1967).

9                   Raimond v. Parish of Terrebonne, 132 U.S. 192, 10 S. Ct. 57, 33 L. Ed. 309 (1889).

10                  Department of Professional & Financial Regulation v. Maine State Employees Ass'n, 2013 ME 23, 64 A.3d  
449 (Me. 2013); 1165 Fifth Avenue Corporation v. Alger, 288 N.Y. 67, 41 N.E.2d 461, 141 A.L.R. 1157  
(1942).

11                  Morrison-Knudsen Co. v. State Tax Commission, 242 Iowa 33, 44 N.W.2d 449, 41 A.L.R.2d 523 (1950).

12                  Northwestern Mut. Life Ins. Co. v. Tone, 125 Conn. 183, 4 A.2d 640, 121 A.L.R. 993 (1939); Pryor v. Briggs  
Mfg. Co., 312 Mich. 476, 20 N.W.2d 279, 161 A.L.R. 699 (1945).

13                  As to difference between stipulation and agreed case, see § 5.

14                  Spooners Creek Land Corp. v. Styron, 276 N.C. 494, 172 S.E.2d 54 (1970).

15                  Kennedy v. B. A. Gardetto, Inc., 306 Mass. 212, 27 N.E.2d 957, 129 A.L.R. 453 (1940); State ex rel. Malin  
v. Merriam, 159 Mo. 655, 60 S.W. 1112 (1901); McGrath v. Rorem, 1926 OK 991, 123 Okla. 163, 252 P.  
418 (1926).

15                  Coyante v. Puerto Rico Ports Authority, 105 F.3d 17, 36 Fed. R. Serv. 3d 1549 (1st Cir. 1997).

## 3 Am. Jur. 2d Agreed Case § 2

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

##### A. General Nature, Definitions, and Distinctions

## § 2. Types of agreed case

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

There are two kinds of agreed case:

- (1) the parties may, without instituting an action, submit to the court an agreed statement of the facts upon which the court may draw appropriate legal conclusions;<sup>1</sup> or
- (2) the parties may, after the litigation has been instituted, submit to the court an agreed statement of the ultimate facts.<sup>2</sup>

### Caution:

An agreed statement of facts submitted after the commencement of an action, on which both parties rest and a motion for directed verdict is made and argued, is not such an agreed case as is contemplated by the statutes providing for submission of controversies without action, and is not therefore subject to the statutory requirements, where it is the understanding of the parties that the submission should be made only to have the court pass on certain matters of law and not to submit the whole case under the statute.<sup>3</sup>

Footnotes

1 Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); Bank of U.S. v. Braveman, 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).  
As to statutes authorizing the submission of controversies without instituting an action, see § 3.

2 Burr v. Des Moines R. R. & Nav. Co., 68 U.S. 99, 17 L. Ed. 561, 1863 WL 6611 (1863); Judkins Ins. Agency, Inc. v. Whitney, 588 A.2d 298 (Me. 1991); McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); Hutcherson v. Sovereign Camp, W.O.W., 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923).  
As to the submission of controversies after instituting an action, see § 4.

3 Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927).

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## 3 Am. Jur. 2d Agreed Case § 3

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

##### A. General Nature, Definitions, and Distinctions

## § 3. Types of agreed case—Submission without instituting action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

### Forms

Forms relating to submission of controversy without action, see Am. Jur. Pleading and Practice Forms, Agreed Case  
[\[Westlaw® Search Query\]](#)

The submission of facts without instituting an action is a substitute for an action,<sup>1</sup> which requires statutory authorization.<sup>2</sup> Such statutes are inapplicable to submissions of agreed statements of fact in pending actions.<sup>3</sup> Statutes which have been enacted for the purpose of allowing the determination of an agreed case have alternately been interpreted as requiring strict compliance<sup>4</sup> or not requiring strict compliance.<sup>5</sup>

The various statutes are not uniform, but they typically authorize parties to a civil controversy to agree on a case containing the facts on which the controversy depends and to present it to a court that would have jurisdiction of such an action.<sup>6</sup> Such statutes contemplate only the determination of questions between parties affecting their interests, and the court is confined to answering only the questions set forth and stipulated to by the parties.<sup>7</sup>

A submission without prior institution of an action is ordinarily impermissible if the submission embraces issues in which any disputed facts are involved.<sup>8</sup>

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Footnotes

1                    [Jerrell v. Equitable Life Assur. Soc.](#), 222 Ala. 687, 134 So. 132 (1931).

2                    [Clason v. Matko](#), 223 U.S. 646, 32 S. Ct. 392, 56 L. Ed. 588 (1912); [Jerrell v. Equitable Life Assur. Soc.](#), 222 Ala. 687, 134 So. 132 (1931); [Pasadena School Dist. v. City of Pasadena](#), 166 Cal. 7, 134 P. 985 (1913) (overruled on other grounds in part by, [Hall v. City of Taft](#), 47 Cal. 2d 177, 302 P.2d 574 (1956)); [Robinson v. Bruce Rent-a-Ford Co.](#), 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); [Bank of U.S. v. Braveman](#), 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932); [Lacis v. Lacis](#), 355 S.W.3d 727 (Tex. App. Houston 1st Dist. 2011), reh'g overruled, (Aug. 10, 2011) and review dismissed w.o.j., (Mar. 16, 2012); [Leonardo v. Bunnell](#), 77 Wash. 495, 137 P. 1033 (1914).

3                    [Rogers v. Davis](#), 223 Iowa 373, 272 N.W. 539 (1937).

4                    [Consolidated Realty Corporation v. Koon](#), 216 N.C. 295, 4 S.E.2d 850 (1939).

5                    [City of Corpus Christi v. Gomez](#), 141 S.W.3d 767 (Tex. App. Corpus Christi 2004).

6                    [De Lucca v. Price](#), 146 Cal. 110, 79 P. 853 (1905); [Robinson v. Bruce Rent-a-Ford Co.](#), 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907); [Beresford Independent School Dist. v. Fletcher](#), 66 S.D. 500, 287 N.W. 497 (1939); [Leonardo v. Bunnell](#), 77 Wash. 495, 137 P. 1033 (1914).

7                    As to the requirement that the controversy be real, not moot, and certified by affidavit, see § 16.  
                  [Office of Hawaiian Affairs v. Cayetano](#), 94 Haw. 1, 6 P.3d 799 (2000); [Union Nat. Bank v. Kupper](#), 63 N.Y. 617, 1875 WL 10911 (1875).

8                    As to the distinction between stipulation and agreed case, see § 5.  
                  [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907); [Consolidated Realty Corporation v. Koon](#), 216 N.C. 295, 4 S.E.2d 850 (1939); [Yeargin, Inc. v. Auditing Div. of Utah State Tax Com'n](#), 2001 UT 11, 20 P.3d 287 (Utah 2001).

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## 3 Am. Jur. 2d Agreed Case § 4

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### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

##### A. General Nature, Definitions, and Distinctions

## § 4. Types of agreed case—Submission after commencement of action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#) 14(10), 18(7)

West's Key Number Digest, [Trial](#) 35

### Forms

Forms relating to submission of controversy after bringing action, see Am. Jur. Pleading and Practice Forms, Agreed Case  
[Westlaw® Search Query]

The submission of facts after an action has been instituted is a common-law action<sup>1</sup> and has long been sanctioned in the federal courts.<sup>2</sup> In some jurisdictions, however, it has been authorized and regulated by statute<sup>3</sup> or by rule.<sup>4</sup>

A controversy may be the subject of an agreed case after one or more pleadings have been filed<sup>5</sup> or after the issue has been joined.<sup>6</sup> In some jurisdictions, an agreed case may be reported by the trial court, without decision, to the appellate court.<sup>7</sup> Although an agreed case is usually submitted when it is first tried, it may be submitted on a retrial resulting from an appeal.<sup>8</sup>

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Footnotes

1                   Campbell v. Boyreau, 62 U.S. 223, 21 How. 223, 16 L. Ed. 96, 1858 WL 9359 (1858); Tyson v. Western  
Nat. Bank, 77 Md. 412, 26 A. 520 (1893).

2                   Glenn v. Fant, 134 U.S. 398, 10 S. Ct. 583, 33 L. Ed. 969 (1890); Raimond v. Parish of Terrebonne, 132 U.S.  
192, 10 S. Ct. 57, 33 L. Ed. 309 (1889); Bond v. Dustin, 112 U.S. 604, 5 S. Ct. 296, 28 L. Ed. 835 (1884);  
Brent v. Chapman, 9 U.S. 358, 3 L. Ed. 125, 1809 WL 1666 (1809); Tucker v. Oxley, 9 U.S. 34, 3 L. Ed.  
29, 1809 WL 1633 (1809); Faw v. Roberdeau's Ex'r, 7 U.S. 174, 2 L. Ed. 402, 1805 WL 1067 (1805).

3                   Williams v. State, 215 Ala. 586, 112 So. 193 (1927); McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540,  
37 P.2d 579, 97 A.L.R. 292 (1934); Hutcherson v. Sovereign Camp, W.O.W., 112 Tex. 551, 251 S.W. 491,  
28 A.L.R. 823 (1923).

4                   Clayton v. Communications Capital Corp., 7 Ariz. App. 449, 440 P.2d 330 (1968); Department of  
Professional & Financial Regulation v. Maine State Employees Ass'n, 2013 ME 23, 64 A.3d 449 (Me. 2013).

5                   Dodson v. Ward, 31 N.M. 54, 240 P. 991, 42 A.L.R. 521 (1925); Sawyer v. Corse, 58 Va. 230, 17 Gratt.  
230, 1867 WL 2889 (1867).

6                   As to pleadings submitted on an agreed case, see §§ 20 to 22.

7                   Willard v. Wood, 135 U.S. 309, 10 S. Ct. 831, 34 L. Ed. 210 (1890); McCarthy v. Employers' Fire Ins. Co.,  
97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); Greene v. Mabey, 35 R.I. 11, 85 A. 118 (1912); Sawyer  
v. Corse, 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).

8                   Department of Professional & Financial Regulation v. Maine State Employees Ass'n, 2013 ME 23, 64 A.3d  
449 (Me. 2013); Members of Bakery & Confectionery Workers Union, Local No. 458 v. Hall Baking Co.,  
320 Mass. 286, 69 N.E.2d 111, 167 A.L.R. 986 (1946).

First Nat. Bank v. Shafer, 64 Colo. 388, 172 P. 1 (1918) (where the original trial was not on an agreed  
statement).

## 3 Am. Jur. 2d Agreed Case § 5

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### I. Overview

#### A. General Nature, Definitions, and Distinctions

## § 5. Stipulation distinguished

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

Although an agreed case is a type of stipulation, and although the terms are sometimes used interchangeably, an agreed case requires agreement on all the ultimate facts essential for determination of the particular litigation, leaving to the court only the function of deciding questions of law.<sup>1</sup>

Whether an agreement is an agreed case or a mere stipulation depends on the intent of the parties.<sup>2</sup> Whether a document stating facts as agreed to is an agreed case or merely a stipulation to certain evidentiary facts from which ultimate facts may be deduced is determined in the light of the substance of the agreement, not according to the name or descriptive term applied to it.<sup>3</sup> A stipulation may be treated as a submission on an agreed statement where the parties stipulate all the facts of the action even though they are not literally in compliance with the statute or rule setting forth the requisites governing the agreed statement.<sup>4</sup> Where the parties file a joint petition asking for a declaration of rights and obligations in relation to a contract, neither party is designated as plaintiff or defendant, no other pleadings are filed, no summons has been issued and served, the petition sets forth a justiciable controversy and the adverse interests and contentions of the parties and is a proper subject matter for a declaratory judgment, the court has jurisdiction, and the appellate court may treat as waived any defects in form and procedure and deem the proceeding as a submission of an agreed case even if it is not strictly in compliance with the statute prescribing the requirements for such submission.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Branding Iron Club v. Riggs](#), 207 F.2d 720 (10th Cir. 1953); [Frati v. Jannini](#), 226 Mass. 430, 115 N.E. 746 (1917); [U Drive It Auto Co. v. Atlantic Fire Ins. Co.](#), 239 N.C. 416, 80 S.E.2d 35 (1954).

As to stipulations, generally, see [Am. Jur. 2d, Stipulations](#) §§ 1 et seq.

2 Clason v. Matko, 223 U.S. 646, 32 S. Ct. 392, 56 L. Ed. 588 (1912); U.S. v. Parrott, 992 F.2d 914 (9th Cir. 1993); Henash v. Ipalook, 985 P.2d 442 (Alaska 1999); Hofsommer v. Hofsommer Excavating, Inc., 488 N.W.2d 380 (N.D. 1992); Yeargin, Inc. v. Auditing Div. of Utah State Tax Com'n, 2001 UT 11, 20 P.3d 287 (Utah 2001).

3 Clason v. Matko, 223 U.S. 646, 32 S. Ct. 392, 56 L. Ed. 588 (1912); Glenn v. Fant, 134 U.S. 398, 10 S. Ct. 583, 33 L. Ed. 969 (1890); Burr v. Des Moines R. R. & Nav. Co., 68 U.S. 99, 17 L. Ed. 561, 1863 WL 6611 (1863); Jerrell v. Equitable Life Assur. Soc., 222 Ala. 687, 134 So. 132 (1931); Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); Federal Nat. Bank v. Koppel, 253 Mass. 157, 148 N.E. 379, 40 A.L.R. 1443 (1925); McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); U Drive It Auto Co. v. Atlantic Fire Ins. Co., 239 N.C. 416, 80 S.E.2d 35 (1954); Volker-Scowcroft Lumber Co. v. Vance, 36 Utah 348, 103 P. 970 (1909).

4 Henry S. Miller Co. v. Wood, 584 S.W.2d 302 (Tex. Civ. App. Texarkana 1979), judgment aff'd, 597 S.W.2d 332 (Tex. 1980).

5 State Highway Commission v. Sweetman Const. Co., 83 S.D. 27, 153 N.W.2d 682 (1967).

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## 3 Am. Jur. 2d Agreed Case § 6

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### I. Overview

#### A. General Nature, Definitions, and Distinctions

## § 6. Civil cases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

The statutes authorizing the submission of an agreed case without prior institution of an action usually restrict the availability of the special proceeding to real controversies over a question suitable to a civil action and on which an effectual judgment can be entered.<sup>1</sup> The sufficiency of a deed to convey title can be adjudicated by the submission of a controversy without action, but all persons having an interest in the controversy must be parties to the end that they may be concluded by the judgment and the controversy be finally adjudicated as in the case of an action.<sup>2</sup>

The presumption that an actual controversy exists between the parties applies to the submission of an agreed case.<sup>3</sup> Where the facts submitted as an agreed case present a justiciable controversy and are sufficient to enable judgment to be given, with no question present but that the issue between the parties is bona fide and not collusive, the court may not decline to hear and decide the controversy on the ground that there might be other facts which if included might change the decision on the issue as it has been presented.<sup>4</sup>

An action for declaratory judgment may be submitted on an agreed case.<sup>5</sup> Declaratory proceedings by means of submission of an agreed case are appropriate to test the constitutionality of police power regulations that threaten otherwise legitimate economic activity with criminal prosecution.<sup>6</sup> However, where the constitutionality of a legislative act is in issue in an agreed case, the court will decline to determine whether the statute is constitutional as to persons who are not shown by the agreed case to be affected thereby, and the provisions that do not affect the party challenging the constitutionality will be construed no further than necessary to determine that party's rights.<sup>7</sup>

Footnotes

1 Colusa County v. Strain, 215 Cal. App. 2d 472, 30 Cal. Rptr. 415 (3d Dist. 1963); Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); Bank of U.S. v. Braveman, 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).  
As to the submission of evidence, usually by way of affidavit, that the controversy submitted is real, see § 16.

2 Spooner's Creek Land Corp. v. Styron, 7 N.C. App. 25, 171 S.E.2d 215 (1969).

3 Witz v. Dale, 129 Ind. 120, 27 N.E. 498 (1891).

4 Title Guarantee & Trust Co. v. Mortgage Commission of New York, 271 N.Y. 302, 3 N.E.2d 433 (1936).

5 Northwestern Mut. Life Ins. Co. v. Tone, 125 Conn. 183, 4 A.2d 640, 121 A.L.R. 993 (1939); Northern Sec. Ins. Co., Inc. v. Dolley, 669 A.2d 1320 (Me. 1996); Elder v. Delcour, 364 Mo. 835, 269 S.W.2d 17, 47 A.L.R.2d 370 (1954); State Highway Commission v. Sweetman Const. Co., 83 S.D. 27, 153 N.W.2d 682 (1967).  
Where the relevant facts have been fully developed and the issue in dispute is solely a question of law, such as the validity of an ordinance, an appropriate procedure is to submit the case to the court on an agreed statement of facts. *Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi*, 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011).

6 Colusa County v. Strain, 215 Cal. App. 2d 472, 30 Cal. Rptr. 415 (3d Dist. 1963).

7 Collins-Dietz-Morris Co. v. State Corp. Com'n, 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).

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## 3 Am. Jur. 2d Agreed Case § 7

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### I. Overview

#### A. General Nature, Definitions, and Distinctions

## § 7. Criminal cases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10)

The agreed case procedure is most often used in civil litigation, but in some criminal proceedings, in both federal and state courts, misdemeanor prosecutions arising from violations of regulatory statutes, after an indictment is returned or an information is filed, have been submitted to the court on an agreed statements of the facts.<sup>1</sup> Any defect in an information in a prosecution for a misdemeanor is cured by submission of the cause on an agreed statement of facts, for the information will be considered to be supplemented by the statement.<sup>2</sup>

In criminal as well as civil proceedings, the submission of an agreed statement of facts, at least until withdrawn after notice, is conclusively binding on the parties as an "admission in judicio."<sup>3</sup> When a criminal case is decided on an agreed statement of facts, the agreed facts become a part of the record, and when an appeal is taken, the appellate court decides the law of the case in light of those facts.<sup>4</sup> A defendant forfeits the right to appellate review of any issue on which the trial court has accepted an agreed statement of facts by failing to object to the trial court's alleged errors.<sup>5</sup>

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### Footnotes

- 1 H. Hackfeld & Co. v. U.S., 197 U.S. 442, 25 S. Ct. 456, 49 L. Ed. 826 (1905); Gibson v. Harrison, 69 Ark. 385, 63 S.W. 999 (1901); Tribble v. State, 89 Ga. App. 593, 80 S.E.2d 711 (1954); Keller v. State, 12 Md. 322, 1858 WL 3255 (1858); State v. Martin, 230 Mo. 1, 129 S.W. 931 (1910).
- 2 District of Columbia v. Lee, 35 App. D.C. 341, 21 Am. Ann. Cas. 973, 1910 WL 20703 (App. D.C. 1910).
- 3 Tribble v. State, 89 Ga. App. 593, 80 S.E.2d 711 (1954).
- 4 Keller v. State, 12 Md. 322, 1858 WL 3255 (1858).



## 3 Am. Jur. 2d Agreed Case I B Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

#### B. Jurisdiction and Parties

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10)

### A.L.R. Library

A.L.R. Index, Agreed Case

A.L.R. Index, Stipulations

West's A.L.R. Digest, Stipulations  14(10)

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## 3 Am. Jur. 2d Agreed Case § 8

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

#### B. Jurisdiction and Parties

## § 8. Jurisdiction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10)

### Forms

Forms relating to agreed case jurisdiction, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

To adjudicate a submitted agreed case, the court must have original jurisdiction of the controversy.<sup>1</sup> Statutory methods for a submission before the trial court on agreed facts imply that the court must have subject-matter jurisdiction of the controversy.<sup>2</sup> Jurisdiction attaches only to the precise state of facts presented by the agreed statement.<sup>3</sup> Although certain objections are deemed waived by the submission of an agreed case,<sup>4</sup> the objection of the court's lack of jurisdiction remains open because parties cannot by consent confer jurisdiction where none otherwise exists.<sup>5</sup>

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### Footnotes

<sup>1</sup> *Willard v. Wood*, 135 U.S. 309, 10 S. Ct. 831, 34 L. Ed. 210 (1890); *Robinson v. Bruce Rent-a-Ford Co.*, 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); *Tyson v. Western Nat. Bank*, 77 Md. 412, 26 A. 520 (1893); *Marx v. Brogan*, 188 N.Y. 431, 81 N.E. 231 (1907); *Carolina Grocery Co. v. Burnet*, 61 S.C. 205, 39 S.E. 381 (1901); *Leonardo v. Bunnell*, 77 Wash. 495, 137 P. 1033 (1914).

<sup>2</sup> *Reliance Ins. Co. v. O'Neill*, 105 Misc. 2d 1018, 430 N.Y.S.2d 239 (Sup 1980) (holding that, even though it was questionable whether the court had jurisdiction over an arbitration controversy involving no-fault

automobile insurance, the court would entertain an application on a stipulated submission of facts since the issue was submitted by stipulation, and the court was bound by the law of the case).

As to the rule that the agreed statement should contain statements showing affirmatively that the court has the required jurisdiction over both the parties and the matter in controversy, see § 18.

<sup>3</sup> State ex rel. Webb v. McCune, 129 Mo. App. 511, 107 S.W. 1030 (1908); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

4 § 13.

<sup>5</sup> Willard v. Wood, 135 U.S. 309, 10 S. Ct. 831, 34 L. Ed. 210 (1890).

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## 3 Am. Jur. 2d Agreed Case § 9

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

#### B. Jurisdiction and Parties

### § 9. Parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10)

Only interested parties, or parties who will be affected by the judgment, can enter an agreed case or make a submission of a controversy.<sup>1</sup> An agreed case requires the consent of the parties and the voluntary submission of all the parties concerned.<sup>2</sup> A submission on an agreed statement of facts affords no opportunity for others to intervene.<sup>3</sup>

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#### Footnotes

1 Beresford Independent School Dist. v. Fletcher, 66 S.D. 500, 287 N.W. 497 (1939).

2 Consolidated Realty Corporation v. Koon, 216 N.C. 295, 4 S.E.2d 850 (1939); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

3 Guntert v. Richardson, 47 Haw. 662, 394 P.2d 444 (1964).

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End of Document

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## 3 Am. Jur. 2d Agreed Case § 10

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

#### B. Jurisdiction and Parties

## § 10. Effect of legal incapacity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10)

A person legally incapable of entering into a valid agreement must have proper representation to submit an agreed case.<sup>1</sup>

If a minor is a party to an action on an agreed case, a next friend or guardian ad litem representing the minor in the litigation is powerless to join in an agreed statement of facts on which the controversy is to be submitted for the decision of the court unless the facts agreed on are to the advantage of the minor<sup>2</sup> or at least in no way jeopardize the minor's rights.<sup>3</sup> This rule also applies to actions in which the minor is represented by a general guardian.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907).

<sup>2</sup> [Greene v. Mabey](#), 35 R.I. 11, 85 A. 118 (1912).

<sup>3</sup> [Rarick v. Vandevier](#), 11 Colo. App. 116, 52 P. 743 (1898), aff'd, [27 Colo. 538](#), 62 P. 364 (1900); [Pettengill v. Gilman](#), 126 Vt. 387, 232 A.2d 773 (1967).

<sup>4</sup> [McLoy v. Arnett](#), 47 Ark. 445, 2 S.W. 71 (1886); [Claxton v. Claxton](#), 56 Mich. 557, 23 N.W. 310 (1885); [Lathers v. Fish](#), 4 Lans. 213 (N.Y. Gen. Term 1871); [Fisher v. Stilson](#), 9 Abb. Pr. 33, 1859 WL 8139 (N.Y. Gen. Term 1859).

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## 3 Am. Jur. 2d Agreed Case I C Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

### I. Overview

#### C. Effect of Submission

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

### A.L.R. Library

A.L.R. Index, Agreed Case

A.L.R. Index, Stipulations

West's A.L.R. Digest, [Stipulations](#)  14(10), 18(7)

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## 3 Am. Jur. 2d Agreed Case § 11

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### I. Overview

#### C. Effect of Submission

## § 11. Agreed statement as special verdict; binding effect on court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

An agreed statement of facts under a rule governing agreed cases is similar to a special verdict in that it is the parties' request for judgment under the applicable law.<sup>1</sup> An agreed statement of facts may be the equivalent of a special verdict if such agreed statement is based upon the ultimate facts of the case,<sup>2</sup> and the statement cannot merely present evidence from which such facts may be inferred.<sup>3</sup>

In a case tried on an agreed statement of facts, the agreed facts are binding on the trial court.<sup>4</sup> The general rule that courts are bound by the stipulations of litigants cannot be invoked to bind or circumscribe a court in its determination of questions of law, and no agreed statement of facts can fix a conclusion of law.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Keller v. State](#), 12 Md. 322, 1858 WL 3255 (1858); [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); [U Drive It Auto Co. v. Atlantic Fire Ins. Co.](#), 239 N.C. 416, 80 S.E.2d 35 (1954); [Hutcherson v. Sovereign Camp, W.O.W.](#), 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923); [Lacis v. Lacis](#), 355 S.W.3d 727 (Tex. App. Houston 1st Dist. 2011), reh'g overruled, (Aug. 10, 2011) and review dismissed w.o.j., (Mar. 16, 2012); [McGhee & Co. v. Cox](#), 116 Va. 718, 82 S.E. 701 (1914); [Riley v. State Bank of De Pere](#), 223 Wis. 16, 269 N.W. 722 (1936).

As to judgment in an agreed case, see § 28.

<sup>2</sup> [U S Trust Co of New York v. New Mexico](#), 183 U.S. 535, 22 S. Ct. 172, 46 L. Ed. 315 (1902); [Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi](#), 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011).

3                   Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi, 775 F. Supp. 2d 416 (D.R.I. 2011),  
aff'd, [667 F.3d 17](#) (1st Cir. 2011).  
As to restrictions on the court's power to draw inferences of fact, see § 27.

4                   McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); Markel Ins. Co.  
v. Muzyka, 293 S.W.3d 380 (Tex. App. Fort Worth 2009).

5                   Cornerstone Mortg., Inc. v. Ponzar, 254 S.W.3d 221 (Mo. Ct. App. E.D. 2008).

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## 3 Am. Jur. 2d Agreed Case § 12

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### I. Overview

#### C. Effect of Submission

## § 12. Binding effect on parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

The submission of an agreed statement of facts is conclusively binding on the parties as a form of judicial admission,<sup>1</sup> and one party cannot secure the determination of an issue not embraced in the agreed case.<sup>2</sup> The submission of an agreed case constitutes an admission that there is no dispute over the facts and a request that the court enter judgment in accordance with the applicable law.<sup>3</sup>

Each party competent to enter into the submission of an agreed case is bound by the statement of facts agreed on<sup>4</sup> unless there is a proper basis, such as fraud or mutual mistake, for setting aside the submission.<sup>5</sup> The submission of such facts precludes the parties from denying them,<sup>6</sup> and if leave to withdraw from an agreed statement of facts has not been applied for and granted, parol evidence to contradict or qualify such facts is inadmissible.<sup>7</sup>

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### Footnotes

- 1 [People v. Bertagnolli](#), 861 P.2d 717 (Colo. 1993); [Tribble v. State](#), 89 Ga. App. 593, 80 S.E.2d 711 (1954). As to the binding effect of an agreed statement of facts, see § 12.
- 2 [Pasadena School Dist. v. City of Pasadena](#), 166 Cal. 7, 134 P. 985 (1913) (overruled on other grounds in part by, [Hall v. City of Taft](#), 47 Cal. 2d 177, 302 P.2d 574 (1956)) (holding that where the question submitted concerned the power of a municipal corporation to enforce building ordinances against a school district to the same extent it could against an individual engaged in construction, an agreed case could not support the determination of the applicability of the provision in such ordinances respecting fire escapes).
- 3 [U Drive It Auto Co. v. Atlantic Fire Ins. Co.](#), 239 N.C. 416, 80 S.E.2d 35 (1954); [Hutcherson v. Sovereign Camp, W.O.W.](#), 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923).

As to the effect of a judgment or decision rendered in an agreed case, see § 28.

4        [Wilcox v. San Jose Fruit-Packing Co.](#), 113 Ala. 519, 21 So. 376 (1897); [Singer Sewing Mach. Co. v. Cole](#),  
187 Ark. 1017, 63 S.W.2d 977 (1933); [Clejan v. Reisman](#), 5 Cal. App. 3d 224, 84 Cal. Rptr. 897 (2d Dist.  
1970); [Luther v. Clay](#), 100 Ga. 236, 28 S.E. 46 (1897); [Kirschbaum v. Mayn](#), 76 Mont. 320, 246 P. 953,  
48 A.L.R. 1425 (1926); [LeBarron v. City of Harvard](#), 129 Neb. 460, 262 N.W. 26, 100 A.L.R. 767 (1935);  
[Hutcherson v. Sovereign Camp, W.O.W.](#), 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923); [Markel Ins.  
Co. v. Muzyka](#), 293 S.W.3d 380 (Tex. App. Fort Worth 2009); [Volker-Scowcroft Lumber Co. v. Vance](#), 36  
Utah 348, 103 P. 970 (1909).

5        [Webster v. Goolsby](#), 130 Ark. 141, 197 S.W. 286 (1917); [Edwards v. City of Raleigh](#), 240 N.C. 137, 81  
S.E.2d 273 (1954).

As to setting aside a submission of an agreed case, see § 30.

6        [Kirschbaum v. Mayn](#), 76 Mont. 320, 246 P. 953, 48 A.L.R. 1425 (1926).

7        [LeBarron v. City of Harvard](#), 129 Neb. 460, 262 N.W. 26, 100 A.L.R. 767 (1935).

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End of Document

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## 3 Am. Jur. 2d Agreed Case § 13

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

##### C. Effect of Submission

## § 13. Waiver of defects

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

The submission of an agreed case cures irregularities in the institution of an action, the pleadings, and the proceedings thereon, and a waiver of objections to such irregularities is implied in the submission itself.<sup>1</sup> Unless a contrary intention appears from the agreed case or from a stipulation attached thereto,<sup>2</sup> objections to defects in prior pleadings are deemed waived by the submission<sup>3</sup> even where the prior pleadings are referred to in the agreed statement.<sup>4</sup> This waiver extends to all irregularities in the pleadings and to a lack of pleadings,<sup>5</sup> including failure to file an answer.<sup>6</sup> Thus, an objection to the time of filing pleadings is waived by a later submission of the controversy on an agreed case,<sup>7</sup> and the same is true with regard to objections that are ordinarily raised by a plea in abatement.<sup>8</sup>

Because the agreed case itself is determinative of the issues, where such a case is submitted after commencement of an action, it constitutes a waiver of the objection that no issue was raised by the pleadings<sup>9</sup> or that there is a variance between prior pleadings and the agreed statement.<sup>10</sup> A stipulation in the agreed case itself that pleadings proper to the case are on file constitutes an express waiver of defects in the pleadings, or of a lack of pleadings, and establishes for the purpose of the controversy the proposition that the pleadings present the case as stated.<sup>11</sup> Likewise, such stipulations constitute a waiver to objections to such matters as nonjoinder of parties plaintiff,<sup>12</sup> service of process,<sup>13</sup> disability of a minor to bring an action,<sup>14</sup> or irregularity in giving a bond.<sup>15</sup>

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#### Footnotes

1 Kennedy v. B. A. Gardetto, Inc., 306 Mass. 212, 27 N.E.2d 957, 129 A.L.R. 453 (1940); Weed v. Calkins,  
2 24 Hun 582 (N.Y. Gen. Term 1881); Chappell v. McIntyre, 9 Tex. 161, 1852 WL 4041 (1852).  
3 Pillsbury v. Brown, 82 Me. 450, 19 A. 858 (1890).  
4 Saltonstall v. Russell, 152 U.S. 628, 14 S. Ct. 733, 38 L. Ed. 576 (1894); Peters v. Farmers State Bank, 106  
5 Kan. 1, 185 P. 892, 8 A.L.R. 1170 (1919); Cities Service Oil Co. v. Taylor, 242 Ky. 157, 45 S.W.2d 1039, 79  
6 A.L.R. 1374 (1932); Whitman v. Allen, 123 Me. 1, 121 A. 160, 36 A.L.R. 776 (1923); Bostick v. Blades, 59  
7 Md. 231, 1883 WL 6043 (1883); Kennedy v. B. A. Gardetto, Inc., 306 Mass. 212, 27 N.E.2d 957, 129 A.L.R.  
8 453 (1940); Hines v. Wilmington & W.R. Co., 95 N.C. 434, 1886 WL 1126 (1886); Chappell v. McIntyre,  
9 9 Tex. 161, 1852 WL 4041 (1852); Sawyer v. Corse, 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).  
10 Esty v. Currier, 98 Mass. 500, 1868 WL 5306 (1868).  
11 Fay v. Locke, 201 Mass. 387, 87 N.E. 753 (1909); Sawyer v. Corse, 58 Va. 230, 17 Gratt. 230, 1867 WL  
12 2889 (1867).  
13 Saltonstall v. Russell, 152 U.S. 628, 14 S. Ct. 733, 38 L. Ed. 576 (1894).  
14 Aultz v. Zucht, 209 S.W. 475 (Tex. Civ. App. San Antonio 1919).  
15 Fay v. Duggan, 135 Mass. 242, 1883 WL 10967 (1883) (nonjoinder of parties plaintiff).  
Frank v. Frank, 6 Mo. App. 589 (1879), memorandum.  
Pillsbury v. Brown, 82 Me. 450, 19 A. 858 (1890).  
Wayne County Sup's v. Kennicott, 103 U.S. 554, 26 L. Ed. 486, 1880 WL 18804 (1880).  
Fay v. Duggan, 135 Mass. 242, 1883 WL 10967 (1883).  
Second Religious Soc. of Boxford v. Harriman, 125 Mass. 321, 1878 WL 10954 (1878).  
Smith v. Carney, 127 Mass. 179, 1879 WL 9272 (1879).  
Parker v. Portis, 14 Tex. 166, 1855 WL 4858 (1855).

## 3 Am. Jur. 2d Agreed Case § 14

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### I. Overview

##### C. Effect of Submission

## § 14. Use in other litigation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

If an agreed statement of facts is not limited by its terms to the litigation in which the agreed case is submitted,<sup>1</sup> it may be admissible in evidence as an admission in subsequent litigation between the same parties involving the same issue.<sup>2</sup> According to the general rule, however, the agreed statement is not absolutely binding or conclusive on the parties in such later litigation<sup>3</sup> and does not preclude further or different proof<sup>4</sup> disproving, rebutting, or explaining away any allegation contained in the agreed statement.<sup>5</sup> If the subsequent trial is a continuation of the original litigation, which has not been finally determined, the agreed statement remains conclusive until the party who seeks to contradict or qualify it takes such steps as are deemed necessary in the particular jurisdiction to be entitled to relief from its terms.<sup>6</sup> However, an admission made in an agreed statement as to a question of law cannot bind a party to the controversy in subsequent litigation where the question of law was not actually decided by the court but was considered as not in controversy.<sup>7</sup>

### Caution:

A different rule has been asserted in at least one jurisdiction, the court taking the view that a stipulation as to mere evidence of facts is not conclusive on the parties in other litigation of the same cause but that an agreed statement of ultimate facts is conclusive in the absence of a showing of cause to the contrary.<sup>8</sup>

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Footnotes

- 1 Illinois Cent. R. Co. v. Hart, 176 F. 245 (C.C.A. 6th Cir. 1910).
- 2 Prestwood v. Watson, 111 Ala. 604, 20 So. 600 (1896); Singer Sewing Mach. Co. v. Cole, 187 Ark. 1017, 63 S.W.2d 977 (1933); Luther v. Clay, 100 Ga. 236, 28 S.E. 46 (1897); LeBarron v. City of Harvard, 129 Neb. 460, 262 N.W. 26, 100 A.L.R. 767 (1935); Volker-Scowcroft Lumber Co. v. Vance, 36 Utah 348, 103 P. 970 (1909).
- 3 Singer Sewing Mach. Co. v. Cole, 187 Ark. 1017, 63 S.W.2d 977 (1933); Luther v. Clay, 100 Ga. 236, 28 S.E. 46 (1897).
- 4 Illinois Cent. R. Co. v. Hart, 176 F. 245 (C.C.A. 6th Cir. 1910); Central Bank of Little Rock v. Downtain, 162 Ark. 46, 257 S.W. 746 (1924); Luther v. Clay, 100 Ga. 236, 28 S.E. 46 (1897).
- 5 Luther v. Clay, 100 Ga. 236, 28 S.E. 46 (1897).
- 6 LeBarron v. City of Harvard, 129 Neb. 460, 262 N.W. 26, 100 A.L.R. 767 (1935).
- 7 State ex rel. Wine v. Keokuk & W.R. Co., 99 Mo. 30, 12 S.W. 290 (1889), aff'd, 152 U.S. 301, 14 S. Ct. 592, 38 L. Ed. 450 (1894).
- 8 Volker-Scowcroft Lumber Co. v. Vance, 36 Utah 348, 103 P. 970 (1909).

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## 3 Am. Jur. 2d Agreed Case II A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

### II. Form of Submission

#### A. In General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Submission of Controversy](#)  6, 8, 9

### A.L.R. Library

A.L.R. Index, Agreed Case

A.L.R. Index, Stipulations

West's A.L.R. Digest, [Submission of Controversy](#)  6, 8, 9

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## 3 Am. Jur. 2d Agreed Case § 15

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

### II. Form of Submission

#### A. In General

## § 15. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Submission of Controversy](#) 6, 8

#### Forms

Forms relating to execution of submission, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

Statute or rules of court frequently specify the content of an agreed case and the form in which it is to be submitted.<sup>1</sup> The agreed statement of facts, whether submitted without action or in a pending action, should be in writing,<sup>2</sup> should be signed by the parties or their counsel, and should be presented to the court or filed with the clerk, according to the local practice.<sup>3</sup> Statutes or rules of court may require that the statement submitting the controversy be verified.<sup>4</sup> It should affirmatively appear from the agreed case that it is submitted for a decision on the law,<sup>5</sup> and the issues of law should be clearly evident.<sup>6</sup>

The submission of a controversy on an agreed case is not accomplished until all that is necessary for a decision is before the court, and the court has taken the matter under advisement.<sup>7</sup>

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Footnotes

1                   Clason v. Matko, 12 Ariz. 213, 100 P. 773 (1909), aff'd, 223 U.S. 646, 32 S. Ct. 392, 56 L. Ed. 588 (1912);  
Warrick Bldg. & Loan Ass'n v. Hougland, 90 Ind. 115, 1883 WL 5602 (1883); City of Stanberry v. Jordan,  
145 Mo. 371, 46 S.W. 1093 (1898); Weed v. Calkins, 24 Hun 582 (N.Y. Gen. Term 1881); Leonardo v.  
Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

2                   Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); Marx v. Brogan,  
188 N.Y. 431, 81 N.E. 231 (1907); Hutcherson v. Sovereign Camp, W.O.W., 112 Tex. 551, 251 S.W. 491,  
28 A.L.R. 823 (1923).

3                   Bond v. Dustin, 112 U.S. 604, 5 S. Ct. 296, 28 L. Ed. 835 (1884); Robinson v. Bruce Rent-a-Ford Co., 205  
Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); Hutcherson v. Sovereign Camp, W.O.W., 112 Tex. 551, 251  
S.W. 491, 28 A.L.R. 823 (1923); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

4                   Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

5                   Campbell v. Boyreau, 62 U.S. 223, 21 How. 223, 16 L. Ed. 96, 1858 WL 9359 (1858); Singer Sewing Mach.  
Co. v. Cole, 187 Ark. 1017, 63 S.W.2d 977 (1933); Tyson v. Western Nat. Bank, 77 Md. 412, 26 A. 520  
(1893).

6                   Binney's Lessee v. Chesapeake & Ohio Canal Co., 33 U.S. 214, 8 L. Ed. 921, 1834 WL 3815 (1834);  
Pasadena School Dist. v. City of Pasadena, 166 Cal. 7, 134 P. 985 (1913) (overruled on other grounds in part  
by, Hall v. City of Taft, 47 Cal. 2d 177, 302 P.2d 574 (1956)).

7                   McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934).

## 3 Am. Jur. 2d Agreed Case § 16

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### II. Form of Submission

#### A. In General

## § 16. Affidavit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Submission of Controversy](#)  9

#### Forms

Forms relating to affidavits, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

Statutes authorizing the submission of an agreed case without the prior institution of an action usually require the submission to be accompanied by an affidavit to the effect that the controversy submitted is a real one and that the proceeding is instituted in good faith to determine the rights of actually interested parties.<sup>1</sup> Where an affidavit is required, compliance with the requirement may be deemed essential to the court's jurisdiction over the agreed case.<sup>2</sup> Such an affidavit is generally not required where the case is submitted after the court has acquired jurisdiction of the parties and the subject matter upon commencement of an action in the ordinary way.<sup>3</sup>

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#### Footnotes

<sup>1</sup> *Collier v. Lindley*, 203 Cal. 641, 266 P. 526 (1928); *De Lucca v. Price*, 146 Cal. 110, 79 P. 853 (1905); *White v. Clarke*, 111 Cal. 425, 44 P. 164 (1896); *Witz v. Dale*, 129 Ind. 120, 27 N.E. 498 (1891); *Robinson v. Bruce Rent-a-Ford Co.*, 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); *Newark, Somerset & Straitsville R. Co. v. Perry County Com'rs*, 30 Ohio St. 120, 1876 WL 172 (1876); *Leonardo v. Bunnell*, 77 Wash. 495, 137 P. 1033 (1914).

2                   Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927).

3                   Robinson v. Bruce Rent-a-Ford Co., 205 Iowa 261, 215 N.W. 724, 61 A.L.R. 851 (1927); Hutcherson v. Sovereign Camp, W.O.W., 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923).

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## 3 Am. Jur. 2d Agreed Case II B Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

### II. Form of Submission

#### B. Statement of Facts

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Submission of Controversy](#)  7

West's Key Number Digest, [Trial](#)  368

### A.L.R. Library

A.L.R. Index, Agreed Case

A.L.R. Index, Stipulations

West's A.L.R. Digest, Submission of Controversy  7

West's A.L.R. Digest, Trial  368

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## 3 Am. Jur. 2d Agreed Case § 17

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### II. Form of Submission

#### B. Statement of Facts

## § 17. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Submission of Controversy](#)7

West's Key Number Digest, [Trial](#)368

### Forms

Forms relating to submission of controversy without action, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

Forms relating to submission of controversy after bringing action, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

A submission of an agreed case must contain a clear statement of the facts agreed on whether it is submitted without prior institution of an action or after an action is brought.<sup>1</sup> However, no greater particularity is required in this respect than is required for the statement of facts in a pleading.<sup>2</sup> The facts agreed on should be stated without ambiguity or material omission<sup>3</sup> and should be alleged as facts, not conclusions from facts or legal conclusions.<sup>4</sup>

### Caution:

The statement should be of ultimate facts as they would be set forth in a special verdict,<sup>5</sup> not merely of evidence of such facts.<sup>6</sup>

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Footnotes

1      [Glenn v. Fant](#), 134 U.S. 398, 10 S. Ct. 583, 33 L. Ed. 969 (1890); [Singer Sewing Mach. Co. v. Cole](#), 187 Ark. 1017, 63 S.W.2d 977 (1933); [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); [Hemphill v. Yerkes](#), 132 Pa. 545, 19 A. 342 (1890); [Leonardo v. Bunnell](#), 77 Wash. 495, 137 P. 1033 (1914).

2      [Brownell v. Town of Greenwich](#), 114 N.Y. 518, 22 N.E. 24 (1889) (holding that a statute providing that in pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to state that it has been duly made may be applied to the statement of facts on which a controversy is submitted).

3      [Graham v. Bayne](#), 59 U.S. 60, 18 How. 60, 15 L. Ed. 265, 1855 WL 8274 (1855); [Singer Sewing Mach. Co. v. Cole](#), 187 Ark. 1017, 63 S.W.2d 977 (1933); [Carr v. Lewis Coal Co.](#), 96 Mo. 149, 8 S.W. 907 (1888); [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); [Trustees of Elon College v. Elon Banking & Trust Co.](#), 182 N.C. 298, 109 S.E. 6, 17 A.L.R. 1205 (1921).

4      [H. Hackfeld & Co. v. U.S.](#), 197 U.S. 442, 25 S. Ct. 456, 49 L. Ed. 826 (1905).

5      [U S Trust Co of New York v. New Mexico](#), 183 U.S. 535, 22 S. Ct. 172, 46 L. Ed. 315 (1902); [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934).

6      As to the agreed statement as a special verdict, see § 11.  
[U S Trust Co of New York v. New Mexico](#), 183 U.S. 535, 22 S. Ct. 172, 46 L. Ed. 315 (1902); [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907); [Trustees of Elon College v. Elon Banking & Trust Co.](#), 182 N.C. 298, 109 S.E. 6, 17 A.L.R. 1205 (1921).

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## 3 Am. Jur. 2d Agreed Case § 18

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### II. Form of Submission

##### B. Statement of Facts

## § 18. Jurisdictional facts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Submission of Controversy](#)7

West's Key Number Digest, [Trial](#)368

An agreed case should contain facts showing affirmatively that the court has the required jurisdiction over both the parties and the matter in controversy.<sup>1</sup> Where the agreed case is based on the judgment of a foreign court of inferior jurisdiction, the statement must include statements showing that the foreign court had jurisdiction of the person and of the subject matter.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Miller v. Nicholls](#), 17 U.S. 311, 4 L. Ed. 578, 1819 WL 2197 (1819); [Carr v. Lewis Coal Co.](#), 96 Mo. 149, 8 S.W. 907 (1888); [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907).

<sup>2</sup> [McLaughlin v. Nichols](#), 13 Abb. Pr. 244, 1861 WL 5511 (N.Y. Gen. Term 1861).

As to jurisdiction of submission on agreed case, see § 8.

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## 3 Am. Jur. 2d Agreed Case § 19

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### II. Form of Submission

#### B. Statement of Facts

## § 19. Sufficiency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Submission of Controversy](#)7

West's Key Number Digest, [Trial](#)368

When proceeding by submission, all facts necessary to a complete determination of the controversy must be unequivocally stipulated,<sup>1</sup> including a recitation that the statement is submitted to the court for its opinion on the law and that the court is requested to render judgment in accordance therewith.<sup>2</sup> An agreed statement of facts must contain sufficient facts to permit an adjudication.<sup>3</sup> For instance, if damages are claimed, facts showing loss or damage must be stated.<sup>4</sup>

The statement should present only questions of law for the court's determination.<sup>5</sup> It must be sufficient in itself to enable the court directly to draw conclusions of law determinative of the matter in controversy<sup>6</sup> and therefore should not be a mere recital of evidence, which would leave the determination of the ultimate facts to the court.<sup>7</sup> The statement must not require the court to weigh conflicting evidence.<sup>8</sup> Ordinarily, to serve as a proper basis for judgment in favor of one of the parties, the statement of the facts agreed on must be sufficient, as a matter of law and without need to resort to inferences, to meet that party's burden of proof or to rebut a *prima facie* case made by the opposite party.<sup>9</sup>

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### Footnotes

<sup>1</sup> *First Nat. Bank v. Shafer*, 64 Colo. 388, 172 P. 1 (1918); *McCarthy v. Employers' Fire Ins. Co.*, 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); *General Psychiatric Evaluation & Care, P.C. v. Kemper Ins. Co.*, 1 Misc. 3d 499, 769 N.Y.S.2d 838 (N.Y. City Civ. Ct. 2003); *Mount Vernon Hebrew Camps Inc. v. Wayne County Com'rs*, 201 Pa. Super. 5, 189 A.2d 924 (1963).

An agreed statement of facts in an interpleader action was not sufficient to support a judgment directing payment of a fund to certain claimants where the issue of actual or constructive notice of assignments of accounts had been raised, and the statement of facts was silent as to both actual notice and recording. [Division of Labor Law Enforcement v. Brooks](#), 226 Cal. App. 2d 631, 38 Cal. Rptr. 284 (1st Dist. 1964).

2 [Tyson v. Western Nat. Bank](#), 77 Md. 412, 26 A. 520 (1893).

3 [Guntiert v. Richardson](#), 47 Haw. 662, 394 P.2d 444 (1964).

4 [Kennedy v. Brent](#), 10 U.S. 187, 3 L. Ed. 194, 1810 WL 1596 (1810); [New York Tel. Co. v. Siegel-Cooper Co.](#), 202 N.Y. 502, 96 N.E. 109 (1911).

5 [Glenn v. Fant](#), 134 U.S. 398, 10 S. Ct. 583, 33 L. Ed. 969 (1890); [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907); [Hutcherson v. Sovereign Camp, W.O.W.](#), 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923).

As to determination by the court of questions of law, see § 25.

6 [Wilson v. Merchants' Loan & Trust Co.](#), 183 U.S. 121, 22 S. Ct. 55, 46 L. Ed. 113 (1901); [Tyson v. Western Nat. Bank](#), 77 Md. 412, 26 A. 520 (1893); [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); [1165 Fifth Avenue Corporation v. Alger](#), 288 N.Y. 67, 41 N.E.2d 461, 141 A.L.R. 1157 (1942); [Trustees of Elon College v. Elon Banking & Trust Co.](#), 182 N.C. 298, 109 S.E. 6, 17 A.L.R. 1205 (1921).

7 [Raimond v. Parish of Terrebonne](#), 132 U.S. 192, 10 S. Ct. 57, 33 L. Ed. 309 (1889); [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907).

8 [Pomeroy's Lessee v. State Bank of Indiana](#), 68 U.S. 592, 17 L. Ed. 638, 1863 WL 6583 (1863).

9 [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); [Ossining Urban Renewal Agency v. Lord](#), 39 N.Y.2d 628, 385 N.Y.S.2d 28, 350 N.E.2d 405 (1976); [Hutcherson v. Sovereign Camp, W.O.W.](#), 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923).

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## 3 Am. Jur. 2d Agreed Case III Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

### III. Pleadings

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#) 14(10)

### A.L.R. Library

A.L.R. Index, Agreed Case

A.L.R. Index, Stipulations

West's A.L.R. Digest, Stipulations 14(10)

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## 3 Am. Jur. 2d Agreed Case § 20

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### III. Pleadings

#### § 20. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

##### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10)

##### Forms

Forms relating to pleadings, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

The purpose of a submission of an agreed case is to do away with the necessity for a summons, complaint, and answer.<sup>1</sup> Thus, in an agreed case submitted without prior institution of an action, pleadings are not required.<sup>2</sup> Nor are such pleadings necessary, as a general rule, when the agreed case is submitted after commencement of the litigation in the ordinary way,<sup>3</sup> the agreed case taking the place of pleadings, as well as evidence.<sup>4</sup> Facts that occur after commencement of the action and after the pleadings, but are included in an agreed statement of facts, are sufficiently before the court to enable a decision on the merits.<sup>5</sup>

Ordinarily, the submission of an agreed case supersedes prior pleadings,<sup>6</sup> but may refer to prior pleadings,<sup>7</sup> as where the agreed statement, by reference, incorporates the facts stated in the complaint.<sup>8</sup> Because an agreed case is controlling as to the facts to be considered, allegations in prior pleadings that are not sustained by the agreed statement will be disregarded.<sup>9</sup>

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##### Footnotes

<sup>1</sup> [McKethan v. Ray](#), 71 N.C. 165, 1874 WL 2541 (1874).

Cities Service Oil Co. v. Taylor, 242 Ky. 157, 45 S.W.2d 1039, 79 A.L.R. 1374 (1932); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

Clason v. Matko, 223 U.S. 646, 32 S. Ct. 392, 56 L. Ed. 588 (1912); Wayne County Sup'r's v. Kennicott, 103 U.S. 554, 26 L. Ed. 486, 1880 WL 18804 (1880); Sawyer v. Corse, 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).

Clason v. Matko, 223 U.S. 646, 32 S. Ct. 392, 56 L. Ed. 588 (1912); Jerrell v. Equitable Life Assur. Soc., 222 Ala. 687, 134 So. 132 (1931); Donald v. St. Louis, K.C. & N.R. Co., 52 Iowa 411, 3 N.W. 462 (1879).

When parties to a lawsuit submit matters in controversy upon an agreed statement of facts, no evidence is admitted or considered by the trial court, and its decision is based upon the papers on file and the arguments of counsel, and the parties' pleadings are immaterial. [Central Mut. Ins. Co. v. KPE Firstplace Land, LLC](#), 271 S.W.3d 454 (Tex. App. Tyler 2008).

Kirschbaum v. Mayn, 76 Mont. 320, 246 P. 953, 48 A.L.R. 1425 (1926).

## § 21.

Sawyer v. Corse, 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).

Whiteside v. North American Accident Ins. Co. of Chicago, 200 N.Y. 320, 93 N.E. 948 (1911).

Sawyer v. Corse, 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).

End of Document

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## 3 Am. Jur. 2d Agreed Case § 21

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### III. Pleadings

#### § 21. Superseded pleadings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

##### West's Key Number Digest

West's Key Number Digest, [Stipulations](#) 14(10)

Where an agreed case is submitted after the commencement of litigation by the bringing of an action, any pleadings that preceded the submission are superseded unless they are made a part of the agreed case by stipulation.<sup>1</sup> In an agreed case submitted in a pending action, the propriety of the judgment depends on proper application of the law to the facts stated as agreed, not on the issues raised by pleadings filed before submission of the agreed case.<sup>2</sup> Thus, the trial court may not rely on facts in a trial brief that were not actually admitted at trial when reaching a decision.<sup>3</sup>

The submission of an agreed case serves the purpose of all of the pleadings used in an ordinary action to form an issue for trial if a complaint has been filed before the submission, it performs no further function in the case, and its insufficiency cannot be assigned as error.<sup>4</sup> This rule applies even where the parties agree that the case stated should be considered as a special verdict founded on the declaration or pleadings filed.<sup>5</sup>

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##### Footnotes

- 1 U.S. v. Eliason, 41 U.S. 291, 10 L. Ed. 968, 1842 WL 5720 (1842).
- 2 Whitten v. Kroeger, 1938 OK 442, 183 Okla. 327, 82 P.2d 668 (1938); Parker v. Delcoure, 455 S.W.2d 339 (Tex. Civ. App. Fort Worth 1970), writ refused n.r.e., (Oct. 7, 1970).
- 3 Kestner v. Kestner, 173 Ohio App. 3d 632, 2007-Ohio-6222, 879 N.E.2d 849 (7th Dist. Columbiana County 2007).
- 4 Warrick Bldg. & Loan Ass'n v. Hougland, 90 Ind. 115, 1883 WL 5602 (1883).
- 5 Bixler v. Kunkle, 17 Serg. & Rawle 298, 1828 WL 2429 (Pa. 1828).  
As to the agreed statement as a special verdict, see § 11.

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End of Document

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## 3 Am. Jur. 2d Agreed Case § 22

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

### III. Pleadings

#### § 22. Request for relief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10)

#### Forms

Forms relating to requests for relief, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

As a general rule, a request for judgment is implied in the submission of an agreed case<sup>1</sup> although there is contrary authority.<sup>2</sup> Any requirement of a request for judgment is satisfied by a provision in the statement of agreed facts that the court should render such judgment as may be proper on the facts.<sup>3</sup>

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#### Footnotes

<sup>1</sup> *Stimpson v. Baltimore & S.R. Co.*, 51 U.S. 329, 10 How. 329, 13 L. Ed. 441, 1850 WL 6934 (1850); *Bank of U.S. v. Braveman*, 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932); *Edwards v. City of Raleigh*, 240 N.C. 137, 81 S.E.2d 273 (1954); *Collins-Dietz-Morris Co. v. State Corp. Com'n*, 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).

<sup>2</sup> *Tyson v. Western Nat. Bank*, 77 Md. 412, 26 A. 520 (1893) (holding that, in the absence of a provision in a case stated for judgment to be entered in conformity with the opinion of the court on the law of the case submitted, it is error to render judgment).

<sup>3</sup> *Bank of U.S. v. Braveman*, 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932).

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End of Document

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## 3 Am. Jur. 2d Agreed Case IV A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### IV. Action of Court upon Submission

##### A. In General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

- West's Key Number Digest, [Appeal and Error](#) 126
- West's Key Number Digest, [Evidence](#) 209
- West's Key Number Digest, [Judgment](#) 86
- West's Key Number Digest, [Stipulations](#) 14(10), 18(7)
- West's Key Number Digest, [Trial](#) 368, 388(4)

### A.L.R. Library

- A.L.R. Index, Agreed Case
- A.L.R. Index, Stipulations
- West's A.L.R. Digest, Appeal and Error 126
- West's A.L.R. Digest, Evidence 209
- West's A.L.R. Digest, Judgment 86
- West's A.L.R. Digest, Stipulations 14(10), 18(7)
- West's A.L.R. Digest, Trial 368, 388(4)

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## 3 Am. Jur. 2d Agreed Case § 23

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### IV. Action of Court upon Submission

#### A. In General

## § 23. Scope of action; evidence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Evidence](#) 209  
West's Key Number Digest, [Trial](#) 368, 388(4)

#### Forms

Forms relating to checklists and captions, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

Forms relating to agreed statements of fact, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

On submission of an agreed case, the court is empowered to consider only questions that are in issue in the case as submitted.<sup>1</sup> Formalities and technical objections immaterial to the determination of the question referred to the court may not be considered by the court.<sup>2</sup> The court is not, however, bound by statements in the agreed case that are expressions of opinion or are inconsistent with facts agreed on in the submission.<sup>3</sup>

The court is precluded from taking evidence or allowing a party to introduce additional facts,<sup>4</sup> and evidence contrary to an agreed statement of facts is inadmissible.<sup>5</sup> Moreover, when a case is tried to the court on an agreed statement of facts, no evidentiary hearing is required.<sup>6</sup> Similarly, no party to a submission can, against the objection of another party, introduce additional facts or evidence.

## CUMULATIVE SUPPLEMENT

### Cases:

Trial court does not play a fact-finding role in a case tried upon stipulated facts, but is limited to applying the law to the agreed-upon facts. [Morse v. Minardi](#), 208 A.3d 1151 (R.I. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 Pasadena School Dist. v. City of Pasadena, 166 Cal. 7, 134 P. 985 (1913) (overruled on other grounds in part by, [Hall v. City of Taft](#), 47 Cal. 2d 177, 302 P.2d 574 (1956)); [Office of Hawaiian Affairs v. Cayetano](#), 94 Haw. 1, 6 P.3d 799 (2000); [Lake County v. Westerfield](#), 273 Ill. 124, 112 N.E. 308 (1916); [Sawyer v. Corse](#), 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).
- 2 [Bostick v. Blades](#), 59 Md. 231, 1883 WL 6043 (1883).  
As to the waiver of defects, see § 13.
- 3 [Gibson v. Harrison](#), 69 Ark. 385, 63 S.W. 999 (1901); [State v. Martin](#), 230 Mo. 1, 129 S.W. 931 (1910).
- 4 [Wilcox v. San Jose Fruit-Packing Co.](#), 113 Ala. 519, 21 So. 376 (1897); [Clayton v. Communications Capital Corp.](#), 7 Ariz. App. 449, 440 P.2d 330 (1968); [Guntert v. Richardson](#), 47 Haw. 662, 394 P.2d 444 (1964); [Edwards v. City of Raleigh](#), 240 N.C. 137, 81 S.E.2d 273 (1954); [Miller v. Stuyvesant Ins. Co. of New York](#), 242 S.C. 322, 130 S.E.2d 913 (1963); [Central Mut. Ins. Co. v. KPE Firstplace Land, LLC](#), 271 S.W.3d 454 (Tex. App. Tyler 2008); [Leonardo v. Bunnell](#), 77 Wash. 495, 137 P. 1033 (1914).
- 5 [Clejan v. Reisman](#), 5 Cal. App. 3d 224, 84 Cal. Rptr. 897 (2d Dist. 1970).
- 6 [International Union, United Auto., Aerospace and Agr. Implement Workers of America-UAW v. General Motors Corp.](#), 104 S.W.3d 126 (Tex. App. Fort Worth 2003).

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## 3 Am. Jur. 2d Agreed Case § 24

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### IV. Action of Court upon Submission

#### A. In General

## § 24. Right to trial or hearing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Evidence](#) 209  
West's Key Number Digest, [Trial](#) 368, 388(4)

A speedy and final judgment may be obtained on the basis of matters in bar and without the formality of a trial on the merits if the parties so agree.<sup>1</sup>

Where an agreed case is properly submitted without prior institution of an action, the parties are entitled to a trial or hearing as in an action,<sup>2</sup> and the issues of law will be considered by the court as though raised in an action or some appropriate form of pleading.<sup>3</sup> The statutes authorizing this procedure frequently require the court to hear and determine the case and render judgment as though an action were pending.<sup>4</sup>

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#### Footnotes

<sup>1</sup> [Kestner v. Kestner](#), 173 Ohio App. 3d 632, 2007-Ohio-6222, 879 N.E.2d 849 (7th Dist. Columbiana County 2007); [Briggs v. Toyota Mfg. of Texas](#), 337 S.W.3d 275 (Tex. App. San Antonio 2010).

As to judgment in an agreed case, see § 28.

<sup>2</sup> [Leonardo v. Bunnell](#), 77 Wash. 495, 137 P. 1033 (1914).

<sup>3</sup> [Bank of U.S. v. Braverman](#), 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932).

<sup>4</sup> [Wayne County Sup's v. Kennicott](#), 103 U.S. 554, 26 L. Ed. 486, 1880 WL 18804 (1880) (providing, further, that in this form of proceeding, as well as where an agreed case is submitted in the course of a pending action, the hearing is a trial of an issue of law).

As to determinations limited to questions of law, see § 25.

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## 3 Am. Jur. 2d Agreed Case § 25

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### IV. Action of Court upon Submission

#### A. In General

## § 25. Determination of questions of law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Appeal and Error](#) 126

West's Key Number Digest, [Trial](#) 368, 388(4)

When the parties have agreed upon the ultimate facts, the court has no independent fact-finding function, and its role is limited to applying the law to the agreed-upon facts.<sup>1</sup> If a case is submitted on a statement of facts sufficient to constitute an agreed case, the court must declare the law on the admitted facts.<sup>2</sup> No point of law can be examined unless it arises from the facts stated.<sup>3</sup>

All questions must be answered on the basis of the agreed statement of facts, which is binding on the court, but different inferences may be drawn therefrom as to the applicability of the law.<sup>4</sup> That part of an agreed statement of facts that is actually an erroneous admission of law may be disregarded by the court in deciding the agreed case,<sup>5</sup> but this rule is inapplicable to a stipulation which on its face appears to be on a matter of law but is actually on an ultimate fact.<sup>6</sup>

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#### Footnotes

<sup>1</sup> [Bucci v. Lehman Brothers Bank](#), FSB, 2013 WL 1498655 (R.I. 2013); [International Union, United Auto., Aerospace and Agr. Implement Workers of America-UAW v. General Motors Corp.](#), 104 S.W.3d 126 (Tex. App. Fort Worth 2003).

<sup>2</sup> [Wayne County Sup'r's v. Kennicott](#), 103 U.S. 554, 26 L. Ed. 486, 1880 WL 18804 (1880); [Bott v. McCoy](#), 20 Ala. 578, 1852 WL 385 (1852); [Pasadena School Dist. v. City of Pasadena](#), 166 Cal. 7, 134 P. 985 (1913) (overruled on other grounds in part by, [Hall v. City of Taft](#), 47 Cal. 2d 177, 302 P.2d 574 (1956)); [Van Brunt v. Pike](#), 4 Gill 270, 1846 WL 1846 (Md. 1846); [McCarthy v. Employers' Fire Ins. Co.](#), 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907); [Hutcherson v. Sovereign Camp, W.O.W.](#), 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923); [City of Barre v. Barre & Chelsea R.](#)

Co., 97 Vt. 398, 123 A. 427, 37 A.L.R. 207 (1924); Sawyer v. Corse, 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

3 Kelley v. Rhoads, 188 U.S. 1, 23 S. Ct. 259, 47 L. Ed. 359 (1903); Bott v. McCoy, 20 Ala. 578, 1852 WL 385 (1852); Pasadena School Dist. v. City of Pasadena, 166 Cal. 7, 134 P. 985 (1913) (overruled in part on other grounds by, Hall v. City of Taft, 47 Cal. 2d 177, 302 P.2d 574 (1956)); Garner v. Freeman, 118 La. 184, 42 So. 767 (1907); Van Brunt v. Pike, 4 Gill 270, 1846 WL 1846 (Md. 1846); McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); 1165 Fifth Avenue Corporation v. Alger, 288 N.Y. 67, 41 N.E.2d 461, 141 A.L.R. 1157 (1942); Hutcherson v. Sovereign Camp, W.O.W., 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923); City of Barre v. Barre & Chelsea R. Co., 97 Vt. 398, 123 A. 427, 37 A.L.R. 207 (1924); McGhee & Co. v. Cox, 116 Va. 718, 82 S.E. 701 (1914); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

4 H. Hackfeld & Co. v. U.S., 197 U.S. 442, 25 S. Ct. 456, 49 L. Ed. 826 (1905); Kelley v. Rhoads, 188 U.S. 1, 23 S. Ct. 259, 47 L. Ed. 359 (1903); State ex rel. Wine v. Keokuk & W.R. Co., 99 Mo. 30, 12 S.W. 290 (1889), aff'd, 152 U.S. 301, 14 S. Ct. 592, 38 L. Ed. 450 (1894).

5 U Drive It Auto Co. v. Atlantic Fire Ins. Co., 239 N.C. 416, 80 S.E.2d 35 (1954).

6 H. Hackfeld & Co. v. U.S., 197 U.S. 442, 25 S. Ct. 456, 49 L. Ed. 826 (1905) (holding that in a prosecution for neglect to return certain immigrants to the port from which they came, a stipulation between the prosecutor and defendant to the effect that the escape of the immigrants could not reasonably have been anticipated, and did not occur by reason of negligence or want of proper care, entitled the parties to have the case tried on the assumption that these ultimate facts were established, no less than the specific facts recited in the stipulation).

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## 3 Am. Jur. 2d Agreed Case § 26

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### IV. Action of Court upon Submission

#### A. In General

## § 26. Determination of questions of fact

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, Trial  368, 388(4)

Findings of fact are inappropriate where testimony is not heard and evidence is not received<sup>1</sup> or where the facts are not in dispute.<sup>2</sup> In cases submitted to the trial court on an agreed statement of facts, no factual issue is "tried" within the scope of a rule which authorizes findings of fact and conclusions of law.<sup>3</sup>

If a case is submitted on an agreed statement of facts, the trial court is limited to the agreed facts and cannot make any findings of fact not conforming to the agreed facts unless provided otherwise in the agreed statement.<sup>4</sup> An agreed statement of facts must cover all points in dispute in order for an action to be decided upon stipulation,<sup>5</sup> and where this is not so, the parties are required to submit a more definite statement of facts or proceed to trial on the disputed issue.<sup>6</sup>

In an agreed case, as in other cases, the court may take judicial notice of facts that are matters of common knowledge.<sup>7</sup>

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#### Footnotes

- 1 Devaney v. Miller, 191 N.C. App. 208, 662 S.E.2d 672 (2008).
- 2 Devaney v. Miller, 191 N.C. App. 208, 662 S.E.2d 672 (2008); Barker v. Eckman, 213 S.W.3d 306 (Tex. 2006).
- 3 Markel Ins. Co. v. Muzyka, 293 S.W.3d 380 (Tex. App. Fort Worth 2009).
- 4 Strasburger Enterprises, Inc. v. TDGT Ltd. Partnership, 110 S.W.3d 566 (Tex. App. Austin 2003). As to drawing inferences from facts, see § 27.
- 5 Habif v. Kemper Auto & Home Ins., 28 Misc. 3d 55, 906 N.Y.S.2d 677 (App. Term 2010).

6 Habif v. Kemper Auto & Home Ins., 28 Misc. 3d 55, 906 N.Y.S.2d 677 (App. Term 2010).  
7 Elder v. Delcour, 364 Mo. 835, 269 S.W.2d 17, 47 A.L.R.2d 370 (1954).

End of Document

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## 3 Am. Jur. 2d Agreed Case § 27

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### IV. Action of Court upon Submission

#### A. In General

## § 27. Determination of questions of fact—Drawing inferences of fact

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Appeal and Error](#) 126

West's Key Number Digest, [Judgment](#) 86

West's Key Number Digest, [Trial](#) 368, 388(4)

As a general rule, on submission of an agreed case, the court cannot draw inferences from facts agreed on<sup>1</sup> except for inferences that, as a matter of law, are necessarily implied.<sup>2</sup> The court may draw necessary inferences from the agreed facts which are proper subjects of judicial notice.<sup>3</sup> However, the court may refuse to do so.<sup>4</sup>

There cannot be any decision on an agreed case unless the facts submitted as agreed lead necessarily, as a matter of law, either to the conclusion urged by one party or to the conclusion urged by the other; if the facts are such that conflicting inferences can be drawn, the court may not draw them but must dismiss the submission,<sup>5</sup> particularly where the submitted agreement expressly excludes any inferences of fact to be drawn from the facts agreed on.<sup>6</sup> Generally, an inference of one fact from another is a question of fact, not of law.<sup>7</sup> Therefore, when a submitted controversy necessarily involves the drawing of inferences from inconclusive, equivocal, or evidentiary facts before a legal conclusion can be formed, that issue must be presented and decided in an action, not in a statutory proceeding on an agreed case.<sup>8</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Absent hearing transcript in divorce case involving payment of children's medical expenses and absent a statement of evidence, Supreme Court would presume the context presented to the district court was adequate to satisfy the requirements of *Koontz*, which held that, in order to make an agreed case a just proceeding, there had to be clear statement of the facts agreed on,

statement of facts had to be sufficient in itself to enable the court directly to draw conclusions of law determinative of the matter in controversy, and statement of facts constituting an agreed case should be made part of the record in the proceeding, lest there be no basis for review of the judgment. Rules App. Proc., Rule 3.03. [Samiec v. Fermelia](#), 2013 WY 101, 308 P.3d 844 (Wyo. 2013).

**[END OF SUPPLEMENT]**

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Footnotes

1 Big Diamond Mills Co. v. U.S., 51 F.2d 721 (C.C.A. 8th Cir. 1931); Connecticut General Life Ins. Co. v. Smith, 226 Ala. 142, 145 So. 651 (1932) (such issues should be referred to the jury); [Clayton v. Communications Capital Corp.](#), 7 Ariz. App. 449, 440 P.2d 330 (1968); [First Nat. Bank v. Shafer](#), 64 Colo. 388, 172 P. 1 (1918); [Garner v. Freeman](#), 118 La. 184, 42 So. 767 (1907); [Tyson v. Western Nat. Bank](#), 77 Md. 412, 26 A. 520 (1893); [Courtemanche v. Blackstone Val. St. Ry. Co.](#), 170 Mass. 50, 48 N.E. 937 (1898); [New York Tel. Co. v. Siegel-Cooper Co.](#), 202 N.Y. 502, 96 N.E. 109 (1911); [Hutcherson v. Sovereign Camp, W.O.W.](#), 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923); [City of Barre v. Barre & Chelsea R. Co.](#), 97 Vt. 398, 123 A. 427, 37 A.L.R. 207 (1924); [McGhee & Co. v. Cox](#), 116 Va. 718, 82 S.E. 701 (1914).

2 Big Diamond Mills Co. v. U.S., 51 F.2d 721 (C.C.A. 8th Cir. 1931); [Van Brunt v. Pike](#), 4 Gill 270, 1846 WL 1846 (Md. 1846); [Glass v. Glass](#), 260 Mass. 562, 157 N.E. 621, 53 A.L.R. 1157 (1927) (overruled on other grounds in part by, [State Tax Com'n v. Felt](#), 331 Mass. 63, 117 N.E.2d 166 (1954)); [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907); [U Drive It Auto Co. v. Atlantic Fire Ins. Co.](#), 239 N.C. 416, 80 S.E.2d 35 (1954); [Hutcherson v. Sovereign Camp, W.O.W.](#), 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923); [Perry v. Aetna Life Ins. Co. of Conn.](#), 380 S.W.2d 868 (Tex. Civ. App. Tyler 1964), writ refused n.r.e., (Oct. 7, 1964); [City of Barre v. Barre & Chelsea R. Co.](#), 97 Vt. 398, 123 A. 427, 37 A.L.R. 207 (1924); [Sawyer v. Corse](#), 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).

3 Big Diamond Mills Co. v. U.S., 51 F.2d 721 (C.C.A. 8th Cir. 1931); [Cadle Co. v. Gabel](#), 69 Conn. App. 279, 794 A.2d 1029 (2002); [U Drive It Auto Co. v. Atlantic Fire Ins. Co.](#), 239 N.C. 416, 80 S.E.2d 35 (1954).

4 [Spooner's Creek Land Corp. v. Styron](#), 7 N.C. App. 25, 171 S.E.2d 215 (1969).

5 [1165 Fifth Avenue Corporation v. Alger](#), 288 N.Y. 67, 41 N.E.2d 461, 141 A.L.R. 1157 (1942).

6 [Petros v. Superintendent and Inspector of Buildings of City of Lynn](#), 306 Mass. 368, 28 N.E.2d 233, 128 A.L.R. 1210 (1940).

7 [Wilson v. Merchants' Loan & Trust Co.](#), 183 U.S. 121, 22 S. Ct. 55, 46 L. Ed. 113 (1901); [Bott v. McCoy](#), 20 Ala. 578, 1852 WL 385 (1852); [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907); [U Drive It Auto Co. v. Atlantic Fire Ins. Co.](#), 239 N.C. 416, 80 S.E.2d 35 (1954).

8 [Marx v. Brogan](#), 188 N.Y. 431, 81 N.E. 231 (1907) (holding that whether a certain building constituted a violation of a covenant designed to prevent a tenement house on certain land could not be decided on an agreed case where the agreed statement of facts contained merely descriptive features of the building involved, which were considered evidentiary).

## 3 Am. Jur. 2d Agreed Case § 28

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### IV. Action of Court upon Submission

##### A. In General

### § 28. Judgment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Appeal and Error](#) 126

West's Key Number Digest, [Judgment](#) 86

West's Key Number Digest, [Trial](#) 368

#### A.L.R. Library

[Modern Views of State Courts as to Whether Consent Judgment is Entitled to Res Judicata or Collateral Estoppel Effect, 91 A.L.R.3d 1170](#)

#### Forms

Forms relating to judgment or decree, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [[Westlaw® Search Query](#)]

In the absence of a statutory provision to the contrary, judgment is rendered in an agreed case the same as in an ordinary proceeding.<sup>1</sup> A judgment by agreement or consent is distinguishable from a judgment on an agreed case in that in the latter, the final determination of matters of law is made by the court, not by the parties.<sup>2</sup>

A judgment is rendered only on the issues of law that are raised by the agreed facts submitted.<sup>3</sup> The propriety of a judgment rendered on submission of an agreed case must be tested on the basis of the stipulated facts filed with the court, and matters contained in affidavits and in testimony reviewed or received at a subsequent hearing cannot be considered.<sup>4</sup> The question for decision is whether the plaintiff, on the agreed statement of facts, is entitled to recover in any form of action and under any proper pleading.<sup>5</sup>

If the case stated, by its terms, limits the right of recovery to rights based on the pleadings, a party is entitled to judgment where the opposing party's pleadings are insufficient.<sup>6</sup> Judgment must be rendered for the defendant if the facts agreed on afford the defendant any defense that would exist if the action was pursued by the plaintiff in the ordinary way.<sup>7</sup> Because the judgment rests entirely on the facts appearing in the agreed case, it is error to render judgment against a party in an individual capacity where the agreed statement recites that the act in controversy was done by that party in an official capacity.<sup>8</sup>

The effect of a judgment rendered on submission of an agreed case is the same as that of a judgment rendered in an ordinary proceeding.<sup>9</sup> A trial court's decision in a case submitted on a stipulation of facts is considered to be a judgment on the merits.<sup>10</sup>

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#### Footnotes

- 1      *Simmons v. Cambridge Sav. Bank*, 346 Mass. 327, 191 N.E.2d 681, 8 A.L.R.3d 856 (1963); *Bank of U.S. v. Braveman*, 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932); *Leonardo v. Bunnell*, 77 Wash. 495, 137 P. 1033 (1914).
- 2      *Kelly v. Town of Milan*, 21 F. 842 (C.C.W.D. Tenn. 1884), aff'd, 127 U.S. 139, 8 S. Ct. 1101, 32 L. Ed. 77 (1888).  
As to consent judgments, generally, see *Am. Jur. 2d, Judgments* §§ 183 to 186.
- 3      *Pasadena School Dist. v. City of Pasadena*, 166 Cal. 7, 134 P. 985 (1913) (overruled on other grounds in part by, *Hall v. City of Taft*, 47 Cal. 2d 177, 302 P.2d 574 (1956)); *Collins-Dietz-Morris Co. v. State Corp. Com'n*, 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931); *Hutcherson v. Sovereign Camp, W.O.W.*, 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923); *International Union, United Auto., Aerospace and Agr. Implement Workers of America-UAW v. General Motors Corp.*, 104 S.W.3d 126 (Tex. App. Fort Worth 2003); *City of Barre v. Barre & Chelsea R. Co.*, 97 Vt. 398, 123 A. 427, 37 A.L.R. 207 (1924); *Sawyer v. Corse*, 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).
- 4      *Clayton v. Communications Capital Corp.*, 7 Ariz. App. 449, 440 P.2d 330 (1968).
- 5      *Bank of U.S. v. Braveman*, 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932).
- 6      *Com. v. Worcester & N.R. Co.*, 124 Mass. 561, 1878 WL 10881 (1878).
- 7      *Moore v. Philbrick*, 32 Me. 102, 1850 WL 1641 (1850); *Sawyer v. Corse*, 58 Va. 230, 17 Gratt. 230, 1867 WL 2889 (1867).
- 8      *Kirschbaum v. Mayn*, 76 Mont. 320, 246 P. 953, 48 A.L.R. 1425 (1926).
- 9      *Central Bank of Little Rock v. Downtain*, 162 Ark. 46, 257 S.W. 746 (1924); *State ex rel. Wine v. Keokuk & W.R. Co.*, 99 Mo. 30, 12 S.W. 290 (1889), aff'd, 152 U.S. 301, 14 S. Ct. 592, 38 L. Ed. 450 (1894).
- 10     *City of Kansas City v. Southwest Tracor Inc.*, 71 S.W.3d 211 (Mo. Ct. App. W.D. 2002).

## 3 Am. Jur. 2d Agreed Case § 29

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### IV. Action of Court upon Submission

##### A. In General

### § 29. Costs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

#### Forms

Forms relating to judgment or decree, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

Costs may be awarded in an agreed case.<sup>1</sup> In jurisdictions where provision is made for submission of a controversy on an agreed statement of acts without action, the statutes usually regulate the allowance of costs, but in the absence thereof, general principles governing costs in civil actions control unless the parties, in submitting the agreed case, make a stipulation with regard to costs.<sup>2</sup>

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#### Footnotes

<sup>1</sup> *New York Tel. Co. v. Siegel-Cooper Co.*, 202 N.Y. 502, 96 N.E. 109 (1911); *Hutcherson v. Sovereign Camp, W.O.W.*, 112 Tex. 551, 251 S.W. 491, 28 A.L.R. 823 (1923); *City of Barre v. Barre & Chelsea R. Co.*, 97 Vt. 398, 123 A. 427, 37 A.L.R. 207 (1924).

<sup>2</sup> *Bank of U.S. v. Braverman*, 259 N.Y. 65, 181 N.E. 50, 82 A.L.R. 658 (1932) (holding that an agreed case may contain a stipulation that costs should be awarded to the successful party or that no costs should be awarded).

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## 3 Am. Jur. 2d Agreed Case IV B Refs.

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### Agreed Case

Jill Gustafson, J.D.

#### IV. Action of Court upon Submission

##### B. Setting Aside, Dismissal, Amendment of Case, Appellate Review

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Appeal and Error](#) 126, 845(2)

West's Key Number Digest, [Stipulations](#) 14(10), 18(7)

### A.L.R. Library

A.L.R. Index, Agreed Case

A.L.R. Index, Stipulations

West's A.L.R. Digest, [Appeal and Error](#) 126, 845(2)

West's A.L.R. Digest, [Stipulations](#) 14(10), 18(7)

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## 3 Am. Jur. 2d Agreed Case § 30

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Agreed Case  
Jill Gustafson, J.D.

### IV. Action of Court upon Submission

#### B. Setting Aside, Dismissal, Amendment of Case, Appellate Review

## § 30. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

The court may set aside the submission of an agreed case if material facts are omitted from the agreed statement of facts or if other good cause exists.<sup>1</sup> If the trial court determines that a judgment rendered on the stipulated facts will result in injustice, the court may discharge the case and order that the action be tried normally<sup>2</sup> or may permit the parties to supply the necessary facts by way of another submission.<sup>3</sup>

A court may refuse to accept submission of a case on an inadequate agreed statement.<sup>4</sup> A court may dismiss a submission on the ground that the facts agreed on are insufficient to support a judgment.<sup>5</sup> If no action was instituted before the submission, and the submission is dismissed, the court lacks jurisdiction over the controversy, and the cause can be determined only by a new submission or by an action.<sup>6</sup> Where, however, the submission is made after commencement of an action, the court has jurisdiction to render final judgment<sup>7</sup> though it may, after setting aside the submission or striking it from the record, allow deficiencies to be supplied by a new submission or by evidence.<sup>8</sup>

### Observation:

In determining whether the trial court has rendered a "decision" upon stipulated facts, which is subject to posttrial motions, or whether it has merely entered judgment upon an agreed statement of facts, which is final and is not subject to posttrial motions, courts consider several factors: (1) the intent of the parties; (2) the parties' instructions to the trial court; and (3) the form of the order or judgment entered by the trial court.<sup>9</sup>

An action to effect a setting aside, withdrawal, or amendment of a submission is ordinarily initiated by a party although the court may take such action on its own initiative.<sup>10</sup> A controversy without action must be dismissed where the statutes authorizing such a procedure have been unconditionally repealed.<sup>11</sup>

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Footnotes

- 1 Wilcox v. San Jose Fruit-Packing Co., 113 Ala. 519, 21 So. 376 (1897); Webster v. Goolsby, 130 Ark. 141, 197 S.W. 286 (1917); Hartford Fire Ins. Co. v. Redding, 47 Fla. 228, 37 So. 62 (1904); McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); 1165 Fifth Avenue Corporation v. Alger, 288 N.Y. 67, 41 N.E.2d 461, 141 A.L.R. 1157 (1942); Northern Pac. Ry. Co. v. Barlow, 20 N.D. 197, 126 N.W. 233 (1910); Volker-Scowcroft Lumber Co. v. Vance, 36 Utah 348, 103 P. 970 (1909); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).
- 2 Clayton v. Communications Capital Corp., 7 Ariz. App. 449, 440 P.2d 330 (1968); Paper Trucking Co. v. Russo, 281 Mass. 209, 183 N.E. 149 (1932).
- 3 McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); Marx v. Brogan, 188 N.Y. 431, 81 N.E. 231 (1907); Lane Const. Corp. v. State, 127 Vt. 287, 248 A.2d 508 (1968).
- 4 Division of Labor Law Enforcement v. Brooks, 226 Cal. App. 2d 631, 38 Cal. Rptr. 284 (1st Dist. 1964).
- 5 Graham v. Bayne, 59 U.S. 60, 18 How. 60, 15 L. Ed. 265, 1855 WL 8274 (1855); 1165 Fifth Avenue Corporation v. Alger, 288 N.Y. 67, 41 N.E.2d 461, 141 A.L.R. 1157 (1942); Title Guarantee & Trust Co. v. Mortgage Commission of New York, 271 N.Y. 302, 3 N.E.2d 433 (1936); New York Cent. Mut. Fire Ins. Co. v. Bellini, 2 Misc. 3d 40, 773 N.Y.S.2d 778 (App. Term 2003); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).
- 6 Marx v. Brogan, 188 N.Y. 431, 81 N.E. 231 (1907).
- 7 Old Colony R. Co. v. Wilder, 137 Mass. 536, 1884 WL 10646 (1884).
- 8 McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934).
- 9 City of Philadelphia v. Benedetto, 801 A.2d 1276 (Pa. Commw. Ct. 2002).
- 10 As to judgment in an agreed case, see § 28.  
Carr v. Lewis Coal Co., 96 Mo. 149, 8 S.W. 907 (1888); McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934); Marx v. Brogan, 188 N.Y. 431, 81 N.E. 231 (1907); Collins-Dietz-Morris Co. v. State Corp. Com'n, 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).
- 11 Spooners Creek Land Corp. v. Styron, 276 N.C. 494, 172 S.E.2d 54 (1970).

## 3 Am. Jur. 2d Agreed Case § 31

American Jurisprudence, Second Edition | May 2021 Update

Agreed Case  
Jill Gustafson, J.D.

### IV. Action of Court upon Submission

#### B. Setting Aside, Dismissal, Amendment of Case, Appellate Review

## § 31. Withdrawal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

### Forms

Forms relating to withdrawal from agreed case, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case [\[Westlaw® Search Query\]](#)

Permission to grant or refuse a request to withdraw from an agreed case rests in the discretion of the court.<sup>1</sup> Thus, when parties submit stipulated facts to a tribunal and the tribunal does not allow the parties to withdraw the stipulations, the parties are subject to those stipulations.<sup>2</sup>

An application for withdrawal must be timely made by a party.<sup>3</sup> Lack of due diligence may serve as ground for refusal of leave to withdraw.<sup>4</sup> After a withdrawal, the court is powerless to decide the litigation on the basis of the agreed case,<sup>5</sup> and the statement of facts on which the case was submitted should be dismissed, discharged, or stricken from the record.<sup>6</sup>

Fraud in the procurement of a submission is good cause for withdrawal therefrom<sup>7</sup> as is mutual mistake.<sup>8</sup> An application for withdrawal may be granted where the application is made before the court has decided the cause and the party applying has discovered other pertinent facts since the submission was entered into, which the other party declines to embrace in the agreed statement, although the omitted facts might have been discovered before the submission.<sup>9</sup>

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Footnotes

1 Webster v. Goolsby, 130 Ark. 141, 197 S.W. 286 (1917); Division of Labor Law Enforcement v. Brooks, 226 Cal. App. 2d 631, 38 Cal. Rptr. 284 (1st Dist. 1964); Hartford Fire Ins. Co. v. Redding, 47 Fla. 228, 37 So. 62 (1904); Northern Pac. Ry. Co. v. Barlow, 20 N.D. 197, 126 N.W. 233 (1910); Volker-Scowcroft Lumber Co. v. Vance, 36 Utah 348, 103 P. 970 (1909).  
As to appellate review, see § 33.

2 State v. Stegman, 41 Kan. App. 2d 568, 203 P.3d 52 (2009).

3 LeBarron v. City of Harvard, 129 Neb. 460, 262 N.W. 26, 100 A.L.R. 767 (1935).

4 Payton v. McQuown, 97 Ky. 757, 17 Ky. L. Rptr. 518, 31 S.W. 874 (1895).

5 Singer Sewing Mach. Co. v. Cole, 187 Ark. 1017, 63 S.W.2d 977 (1933); Carr v. Lewis Coal Co., 96 Mo. 149, 8 S.W. 907 (1888); McCarthy v. Employers' Fire Ins. Co., 97 Mont. 540, 37 P.2d 579, 97 A.L.R. 292 (1934).

6 Singer Sewing Mach. Co. v. Cole, 187 Ark. 1017, 63 S.W.2d 977 (1933); Marx v. Brogan, 188 N.Y. 431, 81 N.E. 231 (1907); Leonardo v. Bunnell, 77 Wash. 495, 137 P. 1033 (1914).

7 Webster v. Goolsby, 130 Ark. 141, 197 S.W. 286 (1917); Edwards v. City of Raleigh, 240 N.C. 137, 81 S.E.2d 273 (1954).

8 Edwards v. City of Raleigh, 240 N.C. 137, 81 S.E.2d 273 (1954).

9 Hartford Fire Ins. Co. v. Redding, 47 Fla. 228, 37 So. 62 (1904).

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End of Document

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## 3 Am. Jur. 2d Agreed Case § 32

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### IV. Action of Court upon Submission

##### B. Setting Aside, Dismissal, Amendment of Case, Appellate Review

## § 32. Amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Stipulations](#)  14(10), 18(7)

### Forms

Forms relating to agreed case amendment, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case; Am. Jur. Pleading and Practice Forms, Appeal and Error [\[Westlaw® Search Query\]](#)

If the agreed statement of facts contains allegations improvidently made by mistake of the parties, or if other good cause is shown, the court may, on a timely request, grant relief by allowing an amendment.<sup>1</sup> In addition, where stipulated facts, in an action on submitted facts, are insufficient, the court should permit the filing of an additional statement.<sup>2</sup> Such an amendment, however, can be allowed only with the consent of both parties.<sup>3</sup>

### Practice Tip:

Where a case from an inferior court purports to be the record of a trial but is in reality an agreed statement of facts, the appellate court is powerless to amend the agreed case, and the exclusive remedy is an application to the inferior court to discharge the case and grant a new trial.<sup>4</sup>

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Footnotes

- 1 [LeBarron v. City of Harvard](#), 129 Neb. 460, 262 N.W. 26, 100 A.L.R. 767 (1935).
- 2 [New York Cent. Mut. Fire Ins. Co. v. Bellini](#), 2 Misc. 3d 40, 773 N.Y.S.2d 778 (App. Term 2003).
- 3 [Wilcox v. San Jose Fruit-Packing Co.](#), 113 Ala. 519, 21 So. 376 (1897); [Consolidated Realty Corporation v. Koon](#), 216 N.C. 295, 4 S.E.2d 850 (1939).
- 4 [State v. Corron](#), 73 N.H. 434, 62 A. 1044 (1905).

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End of Document

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## 3 Am. Jur. 2d Agreed Case § 33

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

#### IV. Action of Court upon Submission

##### B. Setting Aside, Dismissal, Amendment of Case, Appellate Review

## § 33. Appellate review

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Appeal and Error](#) 126, 845(2)

### Forms

Forms relating to appeal or appellate review, generally, see Am. Jur. Pleading and Practice Forms, Agreed Case; Am. Jur. Pleading and Practice Forms, Appeal and Error [\[Westlaw® Search Query\]](#)

When review in an appellate court is sought, the parties typically state in the agreed case that the right to appeal or to sue out a writ of error is reserved.<sup>1</sup>

Review of a decision in a case tried upon a set of stipulated facts is narrowly defined.<sup>2</sup> The appellate court presumes conclusively that the parties have brought before the court all facts necessary for the presentation and adjudication of the case.<sup>3</sup> An appellate court does not review the legal or factual sufficiency of the evidence in a case tried on stipulated facts,<sup>4</sup> and it disregards any findings of fact made by the trial court.<sup>5</sup> Rather, an appellate court reviews *de novo*<sup>6</sup> whether the trial court correctly applied the law to the stipulated facts.<sup>7</sup> In an appeal of an agreed case, there are no presumed findings in favor of the judgment, and the pleadings are immaterial.<sup>8</sup>

**Practice Tip:**

Strict compliance with a rule requiring a signed agreed statement to be certified by the trial court to be correct, when the trial court hears a case on stipulated facts, is not required; where the record indicates that the trial court heard the case on stipulated facts, a reviewing court may treat the case as one involving an agreed statement of facts.<sup>9</sup>

In a case tried on an agreed statement of facts, the agreed facts are binding on the reviewing court,<sup>10</sup> and the reviewing court is limited to those facts unless other facts are necessarily implied from the express facts in the agreed statement of fact.<sup>11</sup> Inferences drawn from the facts stated are not binding on appeal, and questions of fact as well as questions of law are open for review on appeal<sup>12</sup> although mixed questions of law and fact resolved by the trial court are afforded deference.<sup>13</sup> New arguments which are purely legal based on the stipulated facts and evidence may be raised for the first time on appeal at the discretion of the appellate court.<sup>14</sup>

The action of the trial court in granting or refusing permission to withdraw from an agreed case will not be disturbed on appeal in the absence of a showing of abuse of discretion.<sup>15</sup>

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**Footnotes**

1 Stimpson v. Baltimore & S.R. Co., 51 U.S. 329, 10 How. 329, 13 L. Ed. 441, 1850 WL 6934 (1850); Tyson v. Western Nat. Bank, 77 Md. 412, 26 A. 520 (1893); Jaffrin v. Di Egidio, 152 Ohio St. 359, 40 Ohio Op. 381, 89 N.E.2d 459 (1949).

2 Delbonis Sand & Gravel Co. v. Town of Richmond, 909 A.2d 922 (R.I. 2006).

3 Markel Ins. Co. v. Muzyka, 293 S.W.3d 380 (Tex. App. Fort Worth 2009).

4 Wells Fargo Bank Northwest, N.A. v. RPK Capital XVI, L.L.C., 360 S.W.3d 691, 76 U.C.C. Rep. Serv. 2d 883 (Tex. App. Dallas 2012), reh'g overruled, (Mar. 19, 2012).

5 Markel Ins. Co. v. Muzyka, 293 S.W.3d 380 (Tex. App. Fort Worth 2009).

6 Baccouche v. Blankenship, 154 Cal. App. 4th 1551, 65 Cal. Rptr. 3d 659 (2d Dist. 2007); Gillespie v. GEICO General Ins. Co., 850 N.E.2d 913 (Ind. Ct. App. 2006); Weber v. Board of County Com'rs of Marshall County, 289 Kan. 1166, 221 P.3d 1094 (2009); Ranta v. Eaton Rapids Public Schools Bd. of Educ., 271 Mich. App. 261, 721 N.W.2d 806, 213 Ed. Law Rep. 282 (2006); Wells Fargo Bank Northwest, N.A. v. RPK Capital XVI, L.L.C., 360 S.W.3d 691, 76 U.C.C. Rep. Serv. 2d 883 (Tex. App. Dallas 2012), reh'g overruled, (Mar. 19, 2012).

When a district court order is based upon stipulated facts, the court of appeals is obligated to make an independent judgment on the merits. *Ritter v. Jones*, 207 P.3d 954 (Colo. App. 2009).

7 *Esposito v. Simkins Industries, Inc.*, 286 Conn. 319, 943 A.2d 456 (2008); *State ex rel. Valentine v. Orr*, 366 S.W.3d 534 (Mo. 2012); *National Farmers Union Property and Cas. Co. v. Farm and City Ins. Co.*, 2004 SD 124, 689 N.W.2d 619 (S.D. 2004); *Wells Fargo Bank Northwest, N.A. v. RPK Capital XVI, L.L.C.*, 360 S.W.3d 691, 76 U.C.C. Rep. Serv. 2d 883 (Tex. App. Dallas 2012), reh'g overruled, (Mar. 19, 2012).

Where the facts of a case are not in dispute, such as where it has been submitted on an agreed statement of facts, the supreme judicial court reviews a judgment for errors of law only. [Town of Frye Island v. State, 2008 ME 27, 940 A.2d 1065, 229 Ed. Law Rep. 706 \(Me. 2008\)](#).

As to the rule that an agreed case may be submitted on a retrial resulting from an appeal, see § 4.

As to the parties being bound and committed by the agreed statement of facts during an appeal and retrial at the direction of the appellate court, see § 12.

8      [Ultrasound Technical Services, Inc. v. Dallas Central Appraisal Dist., 357 S.W.3d 174 \(Tex. App. Dallas 2011\)](#), review denied, (Apr. 13, 2012).

9      As to pleadings in an agreed case, see §§ 20 to 22.

10     [Taylor v. First Community Credit Union, 316 S.W.3d 863 \(Tex. App. Houston 14th Dist. 2010\)](#).

11     [Double M Const., Inc. v. State Corp. Com'n, 288 Kan. 268, 202 P.3d 7 \(2009\); Ranta v. Eaton Rapids Public Schools Bd. of Educ., 271 Mich. App. 261, 721 N.W.2d 806, 213 Ed. Law Rep. 282 \(2006\); Markel Ins. Co. v. Muzyka, 293 S.W.3d 380 \(Tex. App. Fort Worth 2009\)](#).

12     [Nu-Way Energy Corp. v. Delp, 205 S.W.3d 667 \(Tex. App. Waco 2006\)](#).

13     [Middlesex Retirement System, LLC v. Board of Assessors of Billerica, 453 Mass. 495, 903 N.E.2d 210 \(2009\)](#).

14     [Hagenberg v. Avedisian, 879 A.2d 436 \(R.I. 2005\)](#).

15     [C9 Ventures v. SVC-West, L.P., 202 Cal. App. 4th 1483, 136 Cal. Rptr. 3d 550, 76 U.C.C. Rep. Serv. 2d 699 \(4th Dist. 2012\)](#).

15     [Hartford Fire Ins. Co. v. Redding, 47 Fla. 228, 37 So. 62 \(1904\); Northern Pac. Ry. Co. v. Barlow, 20 N.D. 197, 126 N.W. 233 \(1910\)](#) (finding a clear abuse of discretion, on an application made five years after a stipulation as to facts was entered into, to set it aside where judgment had been tried, submitted, and decided on the stipulation; signed and verified by counsel; and entered into in good faith).

## 3 Am. Jur. 2d Agreed Case Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

### Agreed Case

Jill Gustafson, J.D.

### Topic Summary

## Correlation Table

### Agreed Case

2002	2013
1	§1
2	§2
3	§3
4	§4
5	§5
6	DELETED
7	§6
8	§7
9	§8
10	§9
11	§10
12	§12
13	§11
14	§12
15	§12
16	§13
17	§14
18	§15
19	§16
20	DELETED
21	§17
22	§18
23	§19
24	§20
25	§21
26	§22
27	§23
28	§24
29	§25
30	§26
31	§27
32	§28
33	§28
34	§29
35	§30
36	§31
37	§32
38	§33

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